

27 FEBRUARY 1947

I N D E X
of
EXHIBITS

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43	2312		Protocol of Signature in con- nection with Exhibit No. 31		17358
145	2313		Fishery Convention Between Japan and the USSR		17360
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202D-2	-		Excerpt from John B. Powell's Book "My Twenty-Five Years in China" (pp. 75 and 76) Objection upheld	Not admitted	17453
202D-3	-		Excerpt from above Book Objection upheld	Not admitted	17455
40	2321		Declaration upon which France, Great Britain, Italy, Japan and Russia Agree not to Conclude a Separate Peace, signed 30 November 1915		17456
150	-		Treaty of Mutual Assistance Between France, the United Kingdom and Turkey, dated 19 October 1939 Objection upheld	Not admitted	17460
151	-		Agreement of Mutual Assistance Between the United Kingdom and Poland Objection upheld	Not admitted	17463
184	-		Joint Declaration by the U. S. of America, the United Kingdom of Great Britain and Northern Ireland, the USSR, China, Australia, Belgium, Canada, Costa Rica, Cuba, Czechoslovakia, Haiti, Honduras, India, Luxemburg, The Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa and Yugoslavia Objection upheld	Not admitted	17463

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185	-		Treaty of Union in the War Against Hitlerite Germany and her Associates in Europe and of Collaboration and Mutual Assistance Thereafter Between the USSR and the United Kingdom of Great Bri- tain and Northern Ireland Objection upheld	Not admitted	17464
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1 Thursday, 27 February 1947
2 - - -
3
4
5 INTERNATIONAL MILITARY TRIBUNAL
6 FOR THE FAR EAST
7 Court House of the Tribunal
8 War Ministry Building
9 Tokyo, Japan
10

11 The Tribunal met, pursuant to adjournment,
12 at 0930.
13 - - -

14 Appearances:

15 For the Tribunal, same as before with the
16 exception of: HONORABLE JUSTICE E. NORTHCROFT,
17 Member from New Zealand, not sitting.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.
20 - - -

21 The Accused:

22 All present except OKAWA, Shumei, who is
23 represented by his counsel.
24 - - -

25 (English to Japanese and Japanese
26 to English interpretation was made by the
27 Language Section, IMTFE.)

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1 MAJOR OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Captain Lazarus.

4 MR. LAZARUS: We next offer in evidence defense
5 document 50, being a note annexed to prosecution Ex-
6 hibit 31.

7 THE PRESIDENT: Mr. Comyns Carr.

8 MR. COMYNS CARR: Your Honor, in our sub-
9 mission this document is inadmissible not only for
10 the reason mentioned on many occasions that it has
11 nothing to do with any question before this Tribunal,
12 which applies with peculiar force in this case, but
13 also because the only purpose of it is to be needless-
14 ly offensive to one of the prosecuting nations. Your
15 Honor doubtlessly appreciates the point.

16 MR. LAZARUS: Mr. President, Mr. Comyns Carr
17 has been unduly vicious in ascribing motives like that
18 to the defense against any one member of the prosecu-
19 tion staff or any nation, and we resent it very highly.
20 I personally never lose sight of the fact that you all
21 represent Allies with whom I fought, but still I am
22 going to do my duty here as an attorney, and every
23 bit of evidence that is good for our side we will
24 introduce.

25 THE PRESIDENT: How is it relevant and material?

1 What probative value has it? That is the only point.

2 MR. LAZARUS: It is part, Mr. President, of
3 one of the prosecution exhibits which they omitted
4 for reasons best known to themselves, and which we
5 think is material, and we certainly will connect it
6 later, Mr. President.

7 GENERAL VASILIEV: May I say a few words
8 about the document, sir?

9 THE PRESIDENT: We cannot hear two counsel
10 on the one side on the same point. The document is
11 admitted. We have some doubt about it, but, as we
12 said yesterday, we are reserving these questions of
13 relevancy.

14 MR. LAZARUS: Yes, sir.

15 "Annexed Note. Dated at Peking, January 20,
16 1925."

17 CLERK OF THE COURT: Defense document No. 50
18 will receive exhibit No. 2311.

19 (Whereupon, the document above re-
20 ferred to was marked defense exhibit No. 2311,
21 and was received in evidence.)

22 MR. LAZARUS: I am sorry. I will start again,
23 Mr. President.

24 "Annexed Note. Dated at Peking, January 20,
25 1925.

"In proceeding this day to the signature of
the Convention embodying Basic Rules of the Relations
between the Union of Soviet Socialist Republics and
Japan, the undersigned Plenipotentiary of the Union
of Soviet Socialist Republics has the honour to tender
hereby to the Government of Japan an expression of
sincere regrets for the Nikolaievsk incident of 1920."

8 We next offer in evidence defense document
9 48, being the Protocol of Signature in connection with
10 prosecution exhibit 31.

THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Defense document No. 48
13 will receive exhibit No. 2312.

(Whereupon, the document above referred to was marked defense exhibit No. 2312, and was received in evidence.)

17 Mr. LAZARUS: I shall read only the next to
18 the last paragraph on page 1.

"The Two Plenipotentiaries further agreed
that there should be opposed to the present Protocol
the Memorandum, handed by the Japanese Plenipotentiary
to the Plenipotentiary of the Union of Soviet Socialist
Republics on August 29th, 1924, and embodying a state-
ment on the conditions of oil and coal fields worked
by the Japanese in Northern Saghalien."

1 We next offer in evidence defense document
2 145, being the Fishery Convention between Japan and
3 the U.S.S.R. dated 23 January 1928, concluded in con-
4 formity with the provisions of prosecution exhibit 31.

5 I shall not read any of the paragraphs now.

6 GENERAL VASILIEV: May I ask for what purpose
7 this document is being presented?

8 THE PRESIDENT: That is a fair question.

9 MR. LAZAKUS: As I explained on the first day,
10 Mr. President, this is one of a series of documents
11 which we will introduce to bring the Tribunal entirely
12 up to date on a situation existing between Japan and
13 Russia at the time of the alleged aggressive war at
14 Namanhan and Khekkhin-Gol in 1938 and 1939, and also
15 Russia's violation of her neutrality pact by declaring
16 war on Japan on 8 August 1945.

17 As I stated, Mr. President, I will not read
18 any paragraphs now. Such paragraphs as are pertinent
19 may be read later. We will show later that this
20 particular treaty was the source of perpetual and
21 perennial disputes between the two parties over its
22 provisions.

23 GENERAL VASILIEV: If the Court please, I
24 believe that the document is quite irrelevant to any
25 issue involved in this case. The accused were not

1 charged with the violation of the Fishery Convention,
2 and therefore it means that they should not try to
3 justify themselves. This document is an attempt to
4 accuse the U.S.S.R. and to treat the U.S.S.R. as if
5 the U.S.S.R. were an accused at this trial, and to
6 accuse the U.S.S.R. of violation of this convention.
7 It is inadmissible as your Honor repeatedly stated
8 in this Court.

9 I must call to the attention of the Tribunal
10 that if this document is admitted we will have to
11 conduct special investigation on the subject and
12 present to the Court a great number of documents in
13 order to elucidate this problem correctly. And I
14 repeat that this document is irrelevant to any issue
15 involved in this case.

16 THE PRESIDENT: It may prove to be irrelevant.
17 We said yesterday that if any document turned out to
18 be irrelevant we would reject it.

19 MR. LAZARUS: We next offer for identification
20 only the publication of the United States Government
21 Printing Office--"

22 CLERK OF THE COURT: Defense document 145
23 will receive exhibit No. 2313.

24 (Whereupon, the document above re-
25 ferred to was marked defense exhibit No. 2313,
and was received in evidence.)

1 MR. LAZARUS: We next offer for identification
2 only the publication of the United States Government
3 Printing Office entitled "Treaty for the Renunciation
4 of War," and we offer in evidence excerpts therefrom,
5 defense document 194, being notes exchanged between
6 several of the powers who were parties to the Kellogg-
7 Briand Pact, prosecution exhibit 32.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Defense document No. 154
10 will receive exhibit No. 2314 for identification only;
11 and the excerpt therefrom, bearing the same document
12 number, will receive exhibit No. 2314-A.

13 Correction in the record, please. That is
14 defense document 154 -- defense document 194.

15 (Whereupon, defense document No. 194
16 was marked defense exhibit No. 2314 for iden-
17 tification; and the excerpt therefrom was
18 marked defense exhibit No. 2314-A and re-
19 ceived in evidence.)

20 MR. LAZARUS: (Reading) "Note of the Govern-
21 ment of the United States to the Governments of Great
22 Britain, Germany, Italy, and Japan. Delivered at the
23 Respective Foreign Offices April 13, 1928.

24 "As Your Excellency is aware, there has
25 recently been exchanged between the Governments of

1 France and the United States a series of notes dealing
2 with the question of a possible international renun-
3 ciation of war. The views of the two Governments have
4 been clearly set forth in the correspondence between
5 them.

6 "The Government of the United States, as
7 stated in its note of February 27, 1928, desires to
8 see the institution of war abolished and stands ready
9 to conclude with the French, British, German, Italian
10 and Japanese Governments a single multilateral treaty
11 open to subsequent adherence by any and all other
12 Governments binding the parties thereto not to resort
13 to war with one another.

14 "The Government of the French Republic, while
15 no less eager to promote the cause of world peace and
16 to cooperate with other nations in any practical
17 movement towards that end, has pointed out certain con-
18 siderations which in its opinion must be borne in mind
19 by those Powers which are members of the League of
20 Nations, parties to the Treaties of Locarno, or parties
21 to other treaties guaranteeing neutrality. My Govern-
22 ment has not conceded that such considerations necessi-
23 tate any modification of its proposal for a multi-
24 lateral treaty, and is of the opinion that every nation
25 in the world can, with a proper regard for its own

1 interests, as well as for the interests of the entire
2 family of nations, join in such a treaty. It believes,
3 moreover, that the execution by France, Great Britain,
4 Germany, Italy, Japan and the United States of a treaty
5 solemnly renouncing war in favor of the pacific settle-
6 ment of international controversies would have tre-
7 mendous moral effect and ultimately lead to the
8 adherence of all the other governments of the world.

9 "The discussions which have taken place
10 between France and the United States have thus reached
11 a point where it seems essential, if ultimate success
12 is to be attained, that the British, German, Italian
13 and Japanese Governments should each have an oppor-
14 tunity formally to decide to what extent, if any, its
15 existing commitments constitute a bar to its partici-
16 pation with the United States in an unqualified
17 renunciation of war.

18 "In these circumstances the Government of the
19 United States, having reached complete agreement with
20 the Government of the French Republic as to this
21 procedure, has instructed me formally to transmit here-
22 with for the consideration of your Government the text
23 of M. Briand's original proposal of last June, together
24 with copies of the notes subsequently exchanged
25 between France and the United States on the subject of

1 a multilateral treaty for the renunciation of war.

2 I have also been instructed by my Government
3 to transmit herewith for consideration a preliminary
4 draft of a treaty representing in a general way the
5 form of treaty which the Government of the United
6 States is prepared to sign with the French, British,
7 German, Italian and Japanese Governments and any other
8 Governments similarly disposed. It will be observed
9 that the language of Articles I and II of this draft
10 treaty is practically identical with that of the
11 corresponding articles in the treaty which M. Briand
12 proposed to the United States.
13

14 The Government of the United States would
15 be pleased to be informed as promptly as may be con-
16 venient whether Your Excellency's Government is in a
17 position to give favorable consideration to the con-
18 clusion of a treaty such as that transmitted herewith,
19 and if not, what specific modifications in the text
20 thereof would make it acceptable.

21 _____
22 P. 43

23 The British Secretary of State for Foreign
24 Affairs (Chamberlain) to the American Ambassador
25 (Houghton).

"(London), May 19, 1928.

1 "Your Excellency: Your note of the 13th
2 April, containing the text of a draft treaty for the
3 renunciation of war, together with copies of the cor-
4 respondence between the United States and French Govern-
5 ments on the subject of this treaty, has been
6 receiving sympathetic consideration at the hands of
7 His Majesty's Government in Great Britain. A note
8 has also been received from the French Government,
9 containing certain suggestions for discussion in
10 connexion with the proposed treaty, and the German
11 Government were good enough to send me a copy of the
12 reply which has been made by them to the proposals of
13 the United States Government.

14 "P. 44

15 "4. After studying the wording of article I
16 of the United States draft, His Majesty's Government
17 do not think that its terms exclude action which a
18 State may be forced to take in self-defence.
19 Mr. Kellogg has made it clear in the speech to which I
20 have referred above that he regards the right of self-
21 defence as inalienable, and His Majesty's Government
22 are disposed to think that on this question no addition
23 to the text is necessary.

24 "P. 45

25 "10. The language of article I, as to the

1 renunciation of war as an instrument of national policy,
2 renders it desirable that I should remind your
3 Excellency that there are certain regions of the world
4 the welfare and integrity of which constitute a special
5 and vital interest for our peace and safety. His
6 Majesty's Government have been at pains to make it
7 clear in the past that interference with these regions
8 cannot be suffered. Their protection against attack
9 is to the British Empire a measure of self-defence.
10 It must be clearly understood that His Majesty's
11 Government in Great Britain accept the new treaty
12 upon the distinct understanding that it does not pre-
13 juice their freedom of action in this respect. The
14 Government of the United States have comparable
15 interests any disregard of which by a foreign Power
16 they have declared that they would regard as an un-
17 friendly act. His Majesty's Government believe,
18 therefore, that in defining their position they are
19 expressing the intention and meaning of the United
20 States Government.

21 "Austen Chamberlain.

22
23 "P. 51

24 "Tokyo, May 26, 1928.

25 "Monsieur l'Ambassadeur: I have the honour

1 to acknowledge the receipt of Your Excellency's
2 Note No. 336 of April 13th last, transmitting to me,
3 under instructions from the Government of the United
4 States, the preliminary draft of a proposed multilateral
5 treaty representing in a general way a form of treaty
6 which the Government of the United States is prepared
7 to sign with the French, British, German, Italian
8 and Japanese Governments and any other Governments
9 similarly disposed, with the object of securing the
10 renunciation of war. At the same time Your Excellency
11 enclosed a copy of the correspondence recently exchanged
12 between the Governments of the United States and the
13 French Republic commencing with a proposal put forward
14 by M. Briand in June, 1927; and you intimated that the
15 Government of the United States desired to be informed
16 whether the Japanese Government were in a position to
17 give favourable consideration to the conclusion of
18 such a treaty as that of which you enclosed a draft --
19 and if not, what specific modifications in the text
20 would make it acceptable.

21 "I beg to inform Your Excellency that the
22 Government of Japan sympathize warmly with the high
23 and beneficent aims of the proposal now made by the
24 United States, which they take to imply the entire
25 abolition of the institution of war, and that they will

1 be glad to render their most cordial cooperation
2 towards the attainment of that end.

3 "The proposal of the United States is under-
4 stood to contain nothing that would refuse to indepen-
5 dent states the right of self-defence, and nothing
6 which is incompatible with the obligations of agree-
7 ments guaranteeing the public peace, such as are em-
8 bodied in the Covenant of the League of Nations and
9 the Treaties of Locarno. Accordingly the Imperial
10 Government firmly believe that unanimous agreement
11 on a mutually acceptable text for such a treaty as is
12 contemplated is well capable of realization by dis-
13 cussion between the six Powers referred to, and they
14 would be happy to collaborate with cordial good will
15 in the discussions with the purpose of securing what
16 they are persuaded is the common desire of all the
17 peoples of the world -- namely, the cessation of wars
18 and the definite establishment among the nations of an
19 era of permanent and universal peace.

20 "P. 72

21 "The British Secretary of State for Foreign
22 Affairs (Chamberlain) to the American Charge (Atherton).

23 "(London), July 18, 1928.

24 "P. 73

25 "As regards the passage in my note of the

1 19th May relating to certain regions of which the
2 welfare and integrity constitute a special and vital
3 interest for our peace and safety, I need only repeat
4 that His Majesty's Government in Great Britain accept
5 the new treaty upon the understanding that it does
6 not prejudice their freedom of action in this respect.

7 I am entirely in accord with the views
8 expressed by Mr. Kellogg in his speech of the 28th
9 April that the proposed treaty does not restrict or
10 impair in any way the right of self-defence, as also
11 with his opinion that each State alone is competent
12 to decide when circumstances necessitate recourse to
13 war for that purpose.

14 In the light of the foregoing explanations,
15 His Majesty's Government in Great Britain are glad
16 to join with the United States and with all other
17 Governments similarly disposed in signing a definitive
18 treaty for the renunciation of war in the form trans-
19 mitted in your note of the 23rd June."

20 I will skip the rest of that.
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On the last page, "Address by M. Aristide Briand, French Minister for Foreign Affairs.

"Page 311.

"Gentlemen: I am fully conscious that silence would best befit such a solemn occasion. Let I should like, without any further words, would be to let each of you simply rise to affix his signature, in the name of his own country, to the greatest collective act born of peace. But I should be failing in my duty to my country if I did not tell you how deeply it feels the honor of welcoming the first signatories of the General Pact for the Renunciation of War.

"It may be objected that this pact is not practicable; that it lacks sanctions. But does true practicability consist in excluding from the realm of facts the moral forces, amongst which is that of public opinion? In fact, the state which would risk incurring the reprobation of all its associates in the pact would run the positive risk of seeing a kind of general solidarity, gradually and spontaneously directed against it, with the redoubtable consequences which it would soon feel. And where is the country, signatory to the pact, which its leaders would assume the responsibility of exposing to such

1 a danger? The modern law of interdependence be-
2 tween nations makes it incumbent upon every statesman
3 to take for himself these memorable words of Presi-
4 dent Coolidge: 'An act of war, in any part of the
5 world, is an act that injures the interests of my
6 country.'"

7 This concludes that group, and we will
8 turn now to the group where we left off yester-
9 day, starting with document No. 104 numerically,
10 document No. 154.

11 We next offer for identification only the
12 book entitled "Reports to the Hague Conference of
13 1899 and 1907," edited by James Brown Scott and put
14 out by the Carnegie Endowment for International
15 Peace, being the official explanatory and inter-
16 pretative commentary accompanying the draft conven-
17 tions and declarations submitted to the Conference
18 by several commissions charged with preparing them.
19

20 We offer in evidence defense document 154,
21 being an excerpt therefrom from pages 502 to 508
22 inclusive, containing a report to the Conference
23 from the Second Commission on opening of hostilities
24 in connection with the Hague Convention III of 1907.
25 This report deals with Articles 1 and 2 of the said
Convention.

1 THE PRESIDENT: Admitted on the usual
2 terms.

3 CLERK OF THE COURT: Defense document No.
4 154 will receive exhibit No. 2315 for identifica-
5 tion only, and the excerpt therefrom, bearing the
6 same document number, will receive exhibit No. 2315-A.

7 (Whereupon, document No. 154 was
8 marked defense exhibit No. 2315 for identifica-
9 tion, and the excerpt therefrom was marked
10 defense exhibit 2315-A and received in
11 evidence.)

12 MR. LAZARUS: I shall read only certain
13 portions of this article, Mr. President, the first
14 three paragraphs on page 1 to start.

15 (Reading): "It was the duty of the Second
16 Commission to study this part of the programme; the
17 present report, however, deals only with 'the
18 opening of hostilities.'"

19 MR. COMYNS CARR: If this document is to
20 be admitted at all, your Honor, I would ask that
21 the actual first paragraph as printed be read, be-
22 ginning with "The Russian programme" --

23 MR. LAZARUS: I shall read that then.

24
25 "The Russian programme contains the
following topic:

1 "Additions to be made to the provisions
2 of the Convention of 1899 relative to the laws and
3 customs of war on land -- besides others, those
4 concerning: the opening of hostilities and the
5 rights of neutrals on land.

6 "It was the duty of the Second Commission
7 to study this part of the programme; the present
8 report, however, deals only with 'the opening of
9 hostilities.'

10 "The question whether there is an obliga-
11 tion upon a Government intending to make war to
12 give notice to its adversary before beginning
13 hostilities has been discussed for years and has
14 given rise not only to lengthy theoretical expo-
15 sitions but also to frequent recriminations between
16 belligerents. It would be a vain task, from the
17 point of view that we must take here, to review
18 the practice in the various wars since the beginning
19 of the last century in an effort to determine
20 whether there is, according to positive international
21 law, any rule on this subject. We have only to ask
22 ourselves whether it is advisable to lay one down,
23 and if so, in what terms.

24 "As to the first point, there can be no
25 doubt. It is clearly desirable that the uncertainty

1 seen in various quarters should cease. Everybody
2 is in favour of an affirmative answer to the first
3 question placed before us by the president of the
4 second subcommission, his Excellency Mr. Asser, in
5 his questionnaire."

6 The questionnaire, incidentally, is on the
7 last two pages, and I shall not read it.

8 "The subcommission has had before it a
9 proposition of the French delegation, and an
10 amendment thereto offered by the Netherland dele-
11 gation. The proposition and its amendment were
12 alike in requiring a warning to be given before
13 opening hostilities and also a notification to
14 neutrals. The difference between them lay in the
15 interval between the warning and hostilities, which
16 the Netherland delegation proposed to fix definitely.
17 Some special questions have also been raised regard-
18 ing the notification to neutrals. We shall give you
19 an explanatory statement on these several points.
20

21 "The French proposition was worded as
22 follows:

23 "ARTICLE 1" --

24 TIR MONITOR: The document was not properly
25 marked, Mr. Lazarus; so will you kindly wait for a
minute?

1 MR. LAZARUS: Yes.

2 (Reading) "ARTICLE 1.

3 "The contracting Powers recognize that
4 hostilities between themselves must not commence
5 without a previous and explicit warning, in the
6 form either of a reasoned declaration of war or
7 of an ultimatum with conditional declaration of
8 war.

9 "ARTICLE 2.

10 "The existence of a state of war must be
11 notified to the neutral Powers without delay.

12 "The main provision of this proposal,
13 which was inspired by a resolution passed by the
14 Institute of International Law at its meeting at
15 Ghent in September, 1906, is easily justified.
16 Two distinct cases are provided for. When a dispute
17 occurs between two States, it will ordinarily lead
18 to diplomatic negotiations more or less lengthy, in
19 which each party attempts to have its pretensions
20 recognized, or at least to secure partial satis-
21 faction. If an agreement is not reached, one of
22 the Powers may set forth in an ultimatum the con-
23 ditions which it requires and from which it declares
24 it will not recede. At the same time it fixes an
25 interval within which a reply may be made and

1 declares that, in the absence of a satisfactory
2 answer, it will have recourse to armed force. In
3 this case there is no surprise and no equivocation.
4 The Power to which such an ultimatum is addressed
5 can come to a decision with a full knowledge of
6 the circumstances; it may give satisfaction to its
7 adversary or it may fight.

8 "Again, a dispute may arise suddenly, and
9 a Power may desire to have recourse to arms without
10 entering upon or prolonging diplomatic negotiations
11 that it considers useless. It ought in that case
12 to give a direct warning of its intention to its
13 adversary, and this warning ought to be explicit.

14 "When an intention to have recourse to
15 armed force is stated conditionally in an ultimatum,
16 a reason is expressed, since war is to be the con-
17 sequence of a refusal to give the satisfaction
18 demanded. This is, however, not necessarily the
19 case when the intention to make war is made mani-
20 fest directly and without a previous ultimatum. The
21 proposal set out above requires that reasons be
22 assigned in this case also. A government ought
23 not to employ so extreme a measure as a resort to
24 arms without giving reasons. Every one, both in
25 the countries about to become belligerents, and

1 also in neutral countries, should know what the
2 war is about in order to form a judgment on the
3 conduct of the two adversaries. Of course this
4 does not mean that we are to cherish the illusion
5 that the real reasons for a war will always be
6 given; but the difficulty of definitely stating
7 reasons, and the necessity of advancing reasons
8 not well substantiated or out of proportion to the
9 gravity of war itself, will naturally arrest the
10 attention of neutral Powers and enlighten public
11 opinion.

12 "The warning should be previous in the
13 sense of preceding hostilities. Shall a given
14 length of time elapse between the receipt of the
15 warning and the beginning of hostilities? The
16 French proposition specifies no interval, which
17 implies that hostilities may begin as soon as the
18 warning has reached the adversary. The time limita-
19 tion before war is begun is thus less determina-
20 ble than in the case of an ultimatum. In the
21 opinion of the French delegation the necessities
22 of modern warfare do not allow of a requirement
23 that the party desiring to take the aggressive
24 should grant further time than what is absolutely
25 indispensable to let its adversary know that force

is to be employed against it.

"The principle of the French proposal met with no objection and the text was voted almost unanimously by the subcommission, after the delegations of Germany, Great Britain, Japan, and Russia had expressly declared themselves in accord with it.

"The delegation of the Netherlands desired to supplement the principle as follows:

"The contracting Powers recognize that hostilities between themselves must not commence until the lapse of twenty-four hours after an explicit warning, having the form of a reasoned declaration of war, or of an ultimatum with conditional declaration of war, has officially come to the attention of the adversary's government.

"The difference between this and the French proposal lies in requiring a fixed interval between the receipt of the warning and the opening of hostilities. The need for this delay was explained by Colonel Michelson, speaking for the Russian delegation, in these words:

"The problem of such a delay is intimately connected with the relation which exists between the peace and war establishments of every country.

Consequently a result of its adoption would be a
1 more or less considerable reduction of expenditures.
2 The time may not be so far distant after all when
3 we shall be able to distinguish between the troops
4 and other preparations for war which every country
5 in its own sovereign judgment deems requisite in
6 its political situation and those that it is com-
7 pelled to maintain only through the necessity of
8 being constantly in readiness for fighting. By
9 establishing a certain interval between the rup-
10 ture of peaceful relations and the beginning of
11 hostilities, an opportunity would be afforded to
12 such countries as may desire it to realize certain
13 economies during times of peace. It is undeniable
14 that these economies would be beneficial in every
15 way, and could not fail to bring about a great re-
16 lief from the burden of peace armies, a relief all
17 the more acceptable because it would in no way
18 affect the right of each nation to fix its own forces and
19 armament solely in accordance with its own views and needs.
20

"There is still another advantage to be
21 derived from the proposed delay. It would leave to
22 friendly and neutral Powers some precious time which
23 they could use in making efforts to bring about a
24 reconciliation, or to persuade the disputants to
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1 submit their causes of difference to the High Court
2 of Arbitration here. But, while speaking of this
3 subject of a delay, we must not lose sight of what
4 is at present possible. The idea of any considerable
5 delay is not yet developed in the consciences of
6 the people of the nations. Consequently it would
7 perhaps not be wise to go too far with our desires,
8 in order that we may not get beyond what is really
9 possible in practice at the present day. So let
10 us content ourselves with accepting the delay of
11 twenty-four hours which has been proposed by the
12 delegation of the Netherlands. Let us leave to the
13 future the work of the future, and merely express
14 our hope that in the future the benefits of a still
15 longer delay will be secured.

16 While the force of this reasoning is
17 undeniable, it did not convince the majority of
18 the subcommission. It did not appear consistent
19 with military exigencies of the present day to fix
20 such an interval; a great advance is gained, how-
21 ever, in securing the admission of the need of a
22 previous warning. Let us hope that in the future
23 we shall make a further advance; but let us not
24 proceed too rapidly. It is noteworthy that the
25 Institute of International Law, in its resolution

1 referred to above, considered that it could not go
2 so far as to suggest a definite interval, although
3 in such a matter as this an assembly of jurists
4 might be expected to be less conservative than an
5 assembly of diplomatists and military and naval men.
6 It limited itself to saying: 'Hostilities shall
7 not commence before the expiration of a delay
8 sufficient to make it certain that the rule of
9 previous and explicit notice cannot be considered
10 as evaded.'

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1 An obligation to make a declaration of war
2 include the reasons therefor awakened some scruples as
3 being contrary to provisions in some constitutions.
4 Thus the Cuban delegates made the following statement:
5 'In view of the fact that paragraph 12 of Article 59
6 of the constitution of Cuba mentions among the powers
7 of Congress that of declaring war, it is not possible
8 for the delegation to subscribe to any act that does
9 not reserve to our Congress the right to determine
10 the form and conditions of such a declaration.' On
11 the other hand, General Porter declared that the
12 French proposal was not inconsistent with the pro-
13 visions of the American Federal constitution, under
14 which Congress has the power to declare war. Indeed,
15 there seems to be some misunderstanding on this point.
16 We should make a distinction between two acts that
17 are often confused because the same expression is
18 used to describe both: namely, the act of deciding
19 on war and the act of communicating this decision to
20 the adversary. According to the constitutions the
21 decision belongs to the sovereign or head of the
22 State, either acting alone or in conjunction with the
23 representatives of the people; but the notification is
24 essentially for the executive. Since the notification
25 closely follows the decision, they are combined under

1 the term 'declaration,' and this is especially
2 the understanding where there is externally only
3 one sovereign act. Bearing this in mind, it is easily
4 shown that the French proposition voted by the sub-
5 commission is not at all inconsistent with constitu-
6 tional provisions of the kind indicated. The liberty
7 of a congress to decide on war in whatever way it
8 chooses is not touched. Can it be supposed that
9 war will be determined upon lightly, even though the
10 formal resolution may not indicate the reasons, and
11 is it too much to ask of a Government which, in
12 execution of such a decision, declares war that it
13 give its reasons therefor? We do not think so.

14 "According to the second article of the
15 French proposal, 'the existence of a state of war
16 must be notified to the neutral Powers without delay.'
17 As a matter of fact, war not only modifies the rela-
18 tions existing between belligerents, but it also
19 seriously affects neutral States and their citizens;
20 it is therefore important that these be given the
21 earliest possible notice. It is hardly to be supposed
22 that, with the present rapid spread of news, much time
23 will elapse before it is everywhere known that a war
24 has broken out, or that a State will be able to invoke
25 its ignorance of the existence of a war in order to

1 evade all responsibility. But as it is possible, in
2 spite of telegraph and cable lines and radiotelegraphy,
3 that the news might not of itself reach those concerned,
4 precautions must be taken. Accordingly two amendments
5 were offered. The first, from the Belgian delegation,
6 was as follows: 'The existence of a state of war must
7 be notified to the neutral Powers. This notification,
8 which may be given even by telegraph, shall not take
9 effect in regard to them until forty-eight hours after
10 its receipt.' The other, offered by the British
11 delegation, in an article contained in a proposal
12 submitted to the Third Commission and referred to this
13 subcommission, said: 'A neutral State is bound to
14 take measures to preserve its neutrality only when
15 it has received from one of the belligerents a notifi-
16 cation of the commencement of the war.'"

17 And the last paragraph on that page, beginning
18 with "The view."

19 "The view which has been adopted is that
20 it is impracticable to fix any delay. The governing
21 idea is a very simple one. A State can be held to
22 duties of neutrality only when it is aware of the
23 existence of the war creating such duties. From the
24 moment when it is informed, no matter by what means
25 (provided there is no doubt of the fact), it must not

1 do anything inconsistent with neutrality. Is it at
2 the same time obliged to prevent acts contrary to
3 neutrality that might be committed on its territory?
4 The obligation to do so presupposes the ability.
5 What can be required of a neutral Government is that
6 it take the necessary measures without delay. The
7 interval within which the measures can be taken will
8 vary, naturally, according to circumstances, extent
9 of territory, and facility of communication. The
10 interval of forty-eight hours, as was proposed,
11 might be, in a given case, too long or too short.
12 There is no need of establishing a legal presumption
13 that the neutral is or is not responsible. It is a
14 question of fact which can be determined usually
15 with but little difficulty."

16 We skip to Annex 1.

17 "Draft of Regulations Relating to the
18 Opening of Hostilities. Text submitted to the Confer-
19 ence.

20 "Article 1"--

21 As a matter of fact, Mr. President, this part
22 has been read and I will omit it. Articles 1 and 2
23 have been read into the record previously.

24 We next offer in evidence defense document
25 471, being the Treaty of Commerce and Navigation

1 between Japan and the United States dated 21 February
2 1911, which was denounced by the United States on
3 26 July 1939, prosecution exhibit 53. As will be
4 later shown, the rights secured to Japan and Japanese
5 nationals upon which her existence so much depended
6 was wiped out by the abrogation and the subsequent
7 freezing of Japanese assets in the United States on
8 25 July 1941, prosecution exhibit 67.

9 I will read only three articles.

10 THE PRESIDENT: Admitted on the usual terms.

11 CLERK OF THE COURT: Defense document 471
12 will receive exhibit No. 2316.

13 (Whereupon, the document above
14 referred to was marked defense exhibit
15 No. 2316 and received in evidence.)

16 MR. LAZARUS: (Reading) "Article 1.

17 "The subjects or citizens of each of the High
18 Contracting Parties shall have liberty to enter,
19 travel and reside in the territories of the other to
20 carry on trade, wholesale and retail, to own or lease
21 and occupy houses, manufactories, warehouses and shops,
22 to employ agents of their choice, to lease land for
23 residential and commercial purposes, and generally to
24 do anything incident to or necessary for trade upon
25 the same terms as native subjects or citizens, submitting

1 themselves to the laws and regulations there
2 established.

3 "They shall not be compelled, under any
4 pretext whatever, to pay any charges or taxes other
5 or higher than those that are or may be paid by native
6 subjects or citizens.

7 "The subjects or citizens of each of the
8 High Contracting Parties shall receive, in the
9 territories of the other, the most constant protection
10 and security for their persons and property, and shall
11 enjoy in this respect the same rights and privileges
12 as are or may be granted to native subjects or citi-
13 zens, on their submitting themselves to the conditions
14 imposed upon the native subjects or citizens.

15 "They shall, however, be exempt in the
16 territories of the other from compulsory military
17 service either on land or sea, in the regular
18 forces, or in the national guard, or in the militia;
19 from all contributions imposed in lieu of personal
20 service, and from all forced loans or military exactions
21 or contributions.

22 "Article 4.

23 "There shall be between the territories of
24 the two High Contracting Parties reciprocal freedom
25 of commerce and navigation. The subjects or citizens

1 of each of the Contracting Parties, equally with the
2 subjects or citizens of the most favored nation,
3 shall have liberty freely to come with their ships
4 and cargoes to all places, ports and rivers in the
5 territories of the other which are or may be opened
6 to foreign commerce, subject always to the laws of
7 the country to which they thus come."

8 And lastly the fourteenth article.

9 "Article 14.

10 "Except as otherwise expressly provided in
11 this Treaty, the High Contracting Parties agree that,
12 in all that concerns commerce and navigation, any
13 privilege, favor or immunity which either Contracting
14 Party has actually granted, or may hereafter grant,
15 to the subjects or citizens of any other State shall
16 be extended to the subjects or citizens of the other
17 Contracting Party gratuitously, if the concession in
18 favor of that other State shall have been gratuitous,
19 and on the same or equivalent conditions, if the con-
20 cession shall have been conditional."

21 We next offer in evidence defense document
22 52 containing the exchange of notes of 2 November 1917
23 regarding China, known as the Lansing-ISHII Agreement
24 wherein the United States recognized Japan's special
25 interests in China.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Defense document No. 52
3 will receive exhibit No. 2317.

4 (Whereupon, the document above
5 referred to was marked defense exhibit
6 No. 2317 and received in evidence.)

7 MR. LAZARUS: (Reading)

8 "From the Secretary of State to Viscount
9 ISHII.

10 "Department of State, Washington
11 "2 November 1917

12 "Excellency:

13 "I have the honor to communicate herein my
14 understanding of the agreement reached by us in our
15 recent conversations touching the questions of
16 mutual interest to our Governments relating to the
17 Republic of China.

18 "In order to silence mischievous reports that
19 have from time to time been circulated, it is believed
20 by us that a public announcement once more of the de-
21 sires and intentions shared by our two Governments
22 with regard to China is advisable.

23 "The Governments of the United States and
24 Japan recognize that territorial propinquity creates
25 special relations between countries, and, consequently

1 the Government of the United States recognizes that
2 Japan has special interests in China, particularly in
3 the part to which her possessions are contiguous.

4 "The territorial sovereignty of China,
5 nevertheless, remains unimpaired and the Government
6 of the United States has every confidence in the
7 repeated assurances of the Imperial Japanese Government
8 that while geographical position gives Japan such
9 special interests they have no desire to discriminate
10 against the trade of other nations or to disregard
11 the commercial rights heretofore granted by China in
12 treaties with other Powers.

13 "The Governments of the United States and
14 Japan deny that they have any purpose to infringe in
15 any way the independence or territorial integrity of
16 China and they declare furthermore that they always
17 adhere to the principle of the so-called 'open door'
18 or equal opportunity for commerce and industry in
19 China.

20 "Moreover, they mutually declare that they
21 are opposed to the acquisition by any Government of
22 any special rights or privileges that would affect
23 the independence or territorial integrity of China
24 or that would deny to the subjects or citizens of
25 any country the full enjoyment of equal opportunity

1 in the commerce and industry of China.

2 "I shall be glad" -- and so forth.

3 "From Viscount ISHII to the Secretary of
4 State.

5 "Japanese Embassy, Washington,

6 "November 2, 1917.

7 "Sir:"--

8 THE PRESIDENT: Is that a similar letter?

9 MR. LAZARUS: In effect it confirms the
10 previous letter, Mr. President. I will omit it.

11 We next offer in evidence defense document
12 152, being exchange of notes dated 14 April 1923
13 between the American Secretary of State and the
14 Japanese Ambassador canceling the aforesaid Lansing-
15 ISHII Agreement.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Defense document No. 152
18 will receive exhibit No. 2318.

19 (Whereupon, the document above
20 referred to was marked defense exhibit
21 No. 2318 and received in evidence.)

22 MR. LAZARUS: I shall read only the second
23 paragraph, if the Tribunal please.

24 (Reading) "The discussions between the two
25 Governments have disclosed an identity of views and,

1 in the light of the understandings arrived at by
2 the Washington Conference on the Limitation of
3 Armament, the American and Japanese Governments
4 are agreed to consider the Lansing-ISHII correspondence
5 of November 2, 1917, as canceled and of no further
6 effect."

7 The letter from the Japanese Ambassador
8 to the Secretary of State confirms the statement on
9 the first letter.

10 We next offer for identification only the
11 book entitled "Conferences on the Limitation of
12 Armament," Washington, November 12, 1921 to February 6,
13 1922, published by the Government Printing Office at
14 Washington, D.C., and defense document 200-A, an
15 excerpt from the minutes therefrom is tendered in
16 evidence for the purpose of showing the interpreta-
17 tion of the term "administrative integrity" of China,
18 contained in the Nine-Power Treaty, which was prosecu-
19 tion exhibit 28, one of the principal treaties which
20 the prosecution charges was violated by the accused.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: Your Honor, with regard
23 to this group of documents, extracts from the confer-
24 ence on the limitation of armaments at Washington,
25 it is our submission that there must be some limit

1 to the extent to which preliminary discussions can
2 be taken as interpreted--as aids to interpreting an
3 agreement finally signed.

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1 THE PRESIDENT: That is our British view
2 and perhaps the American view, I think it is, but
3 it is not the universal view. I have had occasion
4 to discover that.

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5 MR. CARR: Yes, I appreciate that our
6 British, and probably also American view, cannot
7 be applied in its full strictness in international
8 law. For that reason I have not objected to two
9 documents of that character already tendered and
10 read by the defense. But, when you come, as you
11 do in this series of documents, to argumentative
12 controversy between the parties in the course of
13 negotiations, and then you find that that contro-
14 versy has been resolved by the signature of an
15 agreement, it then appears to follow, in my sub-
16 mission, that the agreement supersedes the statements
17 made in the course of argument and that those
18 statements cannot be used to interpret it.

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The other objection to many of the extracts
from this book which are offered is that they raise
new controversial issues of ancient history, particu-
larly with regard to the Twenty-One Demands made
against China by Japan in 1915. And if we are to
go into those, it will very largely, and in our
submission unnecessarily, extend the scope of this

1 inquiry. On both of those grounds we ask the
2 Tribunal to exclude this group of documents.

3 MR. LAZA US: Mr. President, you have
4 correctly stated that the rule that a document may
5 not be further explained or elucidated by the
6 debates or addresses surrounding it is not an
7 universal rule. In the United States, whether in
8 State courts or in Federal Courts, when it comes
9 to the question of interpreting even a city ordi-
10 nance by the Board of Aldermen or the lowest type
11 of legislative authority, the minutes of the meetings,
12 the addresses by the proponents and the opponents
13 of the measure are looked into very thoroughly.

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1 THE PRESIDENT: I don't think that applies
2 in any part of the British Empire. However, this
3 discussion is useless.

4 MR. LAZARUS: We have another basis for the
5 support of the admission of this, Mr. President.

6 THE PRESIDENT: You see, this is the diffi-
7 culty: Let in any part of these negotiations and
8 then you let in the lot of them, extending over
9 years sometimes. Where do you end? However, to
10 shorten the matter, we have decided to admit this
11 with the usual reservations.

12 MR. LAZARUS: Yes, sir.

13 MR. COMYNS CARR: Your Honor, might I
14 just correct: According to information supplied to
15 me by United States colleagues, what my friend has
16 just said about the United States practice, in order
17 that there may be no misunderstanding about it, I
18 am informed that in the United States reference to
19 discussions leading up to legislation is only per-
20 mitted if it is first shown that there is a patent
21 ambiguity in the legislation itself.

22 CLERK OF THE COURT: Defense document No.
23 200 will be given exhibit No. 2319 for identifica-
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tion only, and the excerpt therefrom, defense document 200-A, will be given exhibit No. 2319-4.

(Whereupon document No. 200 was marked defense exhibit No. 2319 for identification, and the excerpt therefrom, document No. 200-A was marked defense exhibit 2319-A and received in evidence.)

8 MR. LAZARUS: I shall read, Mr. President,
9 only the last two paragraphs.

"ADMLR BARON KATO asked the meaning of the phrase 'administrative integrity' as used in the proposed Resolution. He desired to know if this referred to political independence, and was not intended to touch upon interests or privileges which in the past had been granted to various countries.

17 "MR. ROOT took the inquiry of Baron KATO
18 to refer to the meaning of the words 'administrative
19 integrity' with reference to their effect upon
20 privileges that had already been granted. He replied
21 that this phrase certainly did not affect any
22 privileges accorded by valid or effective grants;
23 that, on the contrary, respect for the administrative
24 integrity of a country required respect for the

1 things that are done in the exercise of its full
2 sovereignty by an independent State."

3 We next offer in evidence defense document
4 200-B, another excerpt from the previous defense
5 exhibit.

6 THE PRESIDENT: Admitted on the usual
7 terms.

8 CLERK OF THE COURT: Defense document 200-B
9 will receive exhibit No. 2319-B.

10 (Whereupon the document above referred
11 to was marked defense exhibit No. 2319-B
12 and received in evidence.)

13 MR. LAZARUS: I will read from the middle
14 of the first page.

15 "MR. HANIHARA desired on behalf of the
16 Japanese delegation to state briefly the position of
17 Japan regarding this matter. He did so by reading
18 a statement as follows:

19 THE PRESIDENT: Read that after the recess.
20 We will recess for fifteen minutes.

21 (Whereupon, at 1045, a recess was
22 taken until 1100, after which the proceedings
23 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Captain Lazarus.

4 MR. LAZARUS: (Reading) "JAPAN'S ATTITUDE
5 IN REGARD TO THE FOREIGN GARRISONS IN CHINA.

6 "The Japanese Delegation wishes to explain,
7 as succinctly as possible, why and how the Japanese
8 garrisons in various parts of China have come to
9 be stationed there. At the outset, however, I
10 desire to disclaim most emphatically that Japan
11 has ever entertained any aggressive purposes or any
12 desire to encroach illegitimately upon Chinese
13 sovereignty in establishing or maintaining these
14 garrisons in China.

15 " "(1) Japanese railway guards are actually
16 maintained along the South Manchurian Railway and
17 the Shantung Railway.

18 "With regard to the Shantung Railway guards,
19 Japan believes that she has on more than one occasion
20 made her position sufficiently clear. She has de-
21 clared and now reaffirms her intention of withdrawing
22 such guards as soon as China shall have notified her
23 that the Chinese Police Force has been duly organized
24 and is ready to take over the charge of the railway
25 protection.

"The maintenance of troops along the
1 South Manchurian Railway stands on a different
2 footing. This is conceded and recognized by China
3 under the Treaty of Peking of 1905. (Additional
4 Agreement, Art. II). It is a measure of absolute
5 necessity under the existing state of affairs in
6 Manchuria -- a region which has been made notorious
7 by the activity of mounted bandits. Even in the
8 presence of Japanese troops, those bandits have made
9 repeated attempts to raid the railway zone. In a
10 large number of cases they have cut telegraph lines
11 and committed other acts of ravage. Their lawless
12 activity on an extended scale has, however, been
13 effectively checked by Japanese railway guards, and
14 general security has been maintained for civilian
15 residents in and around the railway zone. The
16 efficiency of such guards will be made all the more
17 significant by a comparison of the conditions pre-
18 vailing in the railway zone with those prevailing
19 in the districts remote from the railway. The with-
20 drawal of railway guards from the zone of the South
21 Manchurian Railway will no doubt leave those districts
22 at the mercy of bandits, and the same conditions of
23 unrest will there prevail as in remote corners of
24 Manchuria. In such a situation it is not possible

1 for Japan to forego the right or rather the duty,
2 of maintaining railway guards in Manchuria, whose
3 presence is duly recognized by treaty.

4 "(2) Towards the end of 1911 the first
5 Revolution broke out in China, and there was com-
6 plete disorder in the Hs

eh district which formed
7 the base of the revolutionary operations. As the
8 lives and property of foreigners were exposed to
9 danger, Japan together with Great Britain, Russia,
10 Germany, and other principal Powers, dispatched
11 troops to Hankow for the protection of her people.
12 This is how a small number of troops have come to
13 be stationed at Hankow. The region has since been the
14 scene of frequent disturbances; there was recently
15 a clash between the North and South at Changsha, village
16 by troops at Ichang, and a mutiny of soldiers at
17 Hankow. Such conditions of unrest have naturally
18 retarded the withdrawal of Japanese troops from
19 Hankow.

20 "It has never been intended that these
21 troops should remain permanently at Hankow, and
22 the Japanese Government have been looking forward to
23 an early opportunity of effecting complete withdrawal
24 of the Hankow garrison. They must be assured, however,
25 that China will immediately take effective measures

for the maintenance of peace and order and for the protection of foreigners, and that she will fully assume the responsibility for the damage that may be or may have been done to foreigners.

"(3) The stationing of the garrisons of foreign countries in North China is recognized by the Chinese Government under the Protocol relating to the Boxer Revolution of 1900. Provided there is no objection from the other countries concerned, Japan will be ready, acting in unison with them, to withdraw her garrison as soon as the actual conditions warrant it.

"(4) The Japanese troops scattered along the lines of the Chinese Eastern Railway have been stationed in connection with an Inter-allied Agreement concluded at Vladivostok in 1919. Their duties are to establish communication between the Japanese contingents in Siberia and South Manchuria. It goes without saying, therefore, that these troops will be withdrawn as soon as the evacuation of Siberia by the Japanese troops is effected."

This is taken from 6 February 1922.

"Mr. HANIHARA read the following reply:

"JAPAN'S STATEMENT REGARDING THE MAINTENANCE OF JAPANESE POLICE IN MANCHURIA AND THE TREATY PORTS

ON CHINA.

"In considering the question of Japanese Consular police in China, two points must be taken into account.

"(1) Such police do not interfere with Chinese or other foreign nationals. Their functions are strictly confined to the protection and control of Japanese subjects.

"(2) The most important duties with which the Japanese police are charged are, first, to prevent the commission of crimes by Japanese, and, second, to find and prosecute Japanese criminals when crimes are committed.

"In view of the geographical proximity of the two countries, it is natural that certain disorderly elements in Japan should move to China, and, taking advantage of the present conditions in that country, should there undertake unlawful activities. When these lawless persons are caught in the act of crime by the Chinese police, it is not difficult for that police force to deal with the case. The culprits are handed over as early as possible to the Japanese authorities for prosecution and trial. But when the criminals flee from the scene of their acts, it is in many cases hard to discover who

1 committed the crimes and what were the causes and
2 circumstances that led up to their commission. This
3 is not difficult for the Chinese authorities,
4 as they have no power to make domiciliary visits
5 to the homes of foreigners who enjoy extraterritorial
6 rights, or to obtain judicial testimony in due form
7 from such foreigners.

8 "Without the full cooperation of the
9 Japanese police, therefore, the punishment of crime
10 is in a great many cases, an impossibility, and
11 those who are responsible for law-breaking escape
12 trial and punishment.

13 " This tendency is specially evident in
14 Manchuria, in which region hundreds of thousands
15 of Japanese are resident. In places where the
16 Japanese police are stationed, there are far fewer
17 criminal cases among Japanese than in places without
18 Japanese police. Lawless elements constantly move
19 to districts beyond the reach of Japanese police
20 supervision.

21 " Apart from the theoretical side of
22 the question it will thus be observed that the
23 stationing of Japanese police in the interior of
24 China has proved to be of much practical usefulness
25 in the prevention of crimes among Japanese residents,

1 without interfering with the daily life or Chinese
2 or of other foreign nationals. The Japanese po-
3 licing provides a protection for the Chinese com-
4 munities which at present their own organization
5 fails to provide.

6 "The Japanese delegation is in possession
7 of knowledge and information as to the actual
8 conditions prevailing in China and especially in Man-
9 churia. However, it is unnecessary to go into
10 details at the present stage."

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1 We next offer in evidence defense document
2 200-C, being a further excerpt from the previous
3 defense exhibit.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Defense document No.
6 200-C will receive exhibit No. 2319-C.

7 (Whereupon, the document above re-
8 ferred to was marked defense exhibit No.
9 2319-C and received in evidence.)

10 MR. LAZARUS: Beginning in the middle of
11 the first page:

12 "MR. HANIHARA, on behalf of the Japanese
13 Delegation, submitted a statement in writing, as follows:

14 "'The leased territories held by Japan at
15 present are Kiaochow and Kwantung Province, namely,
16 Port Arthur and Dairen. It is characteristic of Japan's
17 leased territories that she obtained them, not directly
18 from China, but as successor to other Powers at
19 considerable sacrifice in men and treasure. She succeeded
20 Russia in the leasehold of Kwantung Province with the
21 express consent of China, and she succeeded Germany
22 in the leasehold of Kiaochow under the Treaty of
23 Versailles.'

24 "'As to Kiaochow, the Japanese Government have
25 already declared on several occasions that they would

1 restore that leased territory to China. We are prepared
2 to come to an agreement with China on this basis. In
3 fact, there are now going on conversations between
4 representatives of Japan and China regarding this
5 question, initiated through the good offices of Mr.
6 Hughes and Mr. Balfour, the result of which, it is hoped,
7 will be a happy solution of the problem. Therefore,
8 the question of the leased territory of Kiaochow is one
9 which properly calls for separate treatment.

10 "The only leased territory, therefore, which
11 remains to be discussed at the Conference, so far as
12 Japan is concerned is Kwantung Province, namely,
13 Port Arthur and Dairen. As to that territory, the
14 Japanese delegates desire to make it clear that Japan
15 has no intention at present to relinquish the important
16 rights she has lawfully acquired and at no small sacrifice.
17 The territory in question forms a part of Manchuria --
18 a region where, by reason of its close propinquity to
19 Japan's territory, more than anything else, she has
20 vital interests in that which relates to her economic
21 life and national safety. This fact was recognized
22 and assurance was given by the American, British and
23 French Governments at the time of the formation of the
24 International Consortium, that these vital interests
25 of Japan in the region in question shall be safeguarded.

1 "In the leased territory of Kwantung Province
2 there reside no less than 65,000 Japanese, and the
3 commercial and industrial interests they have established
4 there are of such importance and magnitude to Japan that
5 they are regarded as an essential part of her economic
6 life.

7 "It is believed that this attitude of the
8 Japanese Delegation toward the leased territory of
9 Kwantung is not against the principle of the Resolution
10 adopted on November 21st.'

11 "MR. HANIHARA for Japan had stated that, as
12 had already been known, the matter of Shantung was
13 being dealt with in the course of conversations outside
14 of the Conference, and that he hoped for a happy result.
15 On the other hand, he had pointed out the difference
16 between the status of Japan's rights in Port Arthur
17 and Dalny and those in Kiaochow, and had stated that
18 Japan had no intention of relinquishing the rights
19 acquired in Port Arthur and Dalny.

20 "Mr. Balfour had illustrated the difference
21 between the British leaseholds at Kowloon and Weihsien
22 and, with regard to the latter, had shown a willingness
23 on the part of Great Britain to relinquish her rights
24 under conditions similar to those set forth by France,
25 but had pointed out the importance of retaining Kowloon.

1 "Continuing, the Chariman observed that in
2 view of the definite statements by Japan with regard
3 to the retention of her rights in Port Arthur and
4 Dalny, and by Great Britain with regard to her inability
5 to relinquish Kowloon, it was necessary to inquire whether
6 the French proposal to return Kwangchowwan and the
7 British offer to relinquish Weihaiwei might be considered
8 without the proviso which required that all other
9 leaseholds be relinquished. He desired to inquire
10 whether consideration of the Shantung matter could be
11 set aside and whether other leases could be treated on
12 a separate basis, and whether in view of the position
13 taken with regard to the maintenance of Japanese rights
14 in Kwantung Province and British rights in Kowloon,
15 France and Great Britain would make more definite
16 statements.

17 "Mr. Balfour replied that this was a very
18 specific question which his former statement, had it
19 been clearer, would have answered; that he had never
20 intended to imply that any action Great Britain might
21 take with regard to Weihaiwei would be determined or
22 guided by the disposition of the Manchurian question;
23 that he had not had Fulny in mind at all, but had been
24 thinking of the Shantung peninsula, in which Weihaiwei
25 is situated. He then declared that the British

1 Government's policy was to make use of the surrender
2 of Weihaiwei to assist in securing a settlement of the
3 question of Shantung and that, if agreement could be
4 reached on this question, the British Government would
5 not hesitate to do their best to promote a general
6 settlement by restoring Weihaiwei to the central
7 Government of China."

8 We next offer in evidence defense document
9 200-D, being a further excerpt from the previous
10 exhibit.

11 THE PRESIDENT: How many of these have you,
12 Captain?

13 MR. LAZARUS: Four more, Mr. President. Each
14 one deals with a different subject. This one, for
15 instance, Mr. President, with some troops that Japan
16 maintained in China for self-protection. In other
17 words, this is not only to explain the Washington
18 Conference. We are not using that only on that basis
19 as Mr. Comyns Carr suggested. This is our affirmative
20 evidence on what Japan had been doing, and what right
21 she had acquired in China and how she was carrying it
22 out; how she was carrying out her obligations that she
23 had assumed under these treaties.

24 THE PRESIDENT: Mr. Comyns Carr.

25 MR. COMYNS CARR: Your Honor, in view of what

1 my friend has just said, I think I should put my objection
2 on a different ground. If my friend is tendering
3 these documents as evidence of the facts stated therein,
4 then, in my submission, ex parte statements by
5 Japanese representatives at this conference do not
6 afford any proof in favor of these Japanese defendants
7 as to the truth of the statements made. If that is
8 an issue I understand there would be considerable
9 evidence, if it is considered relevant, to the contrary.

10 MR. LAZARUS: I said, Mr. President, that that
11 was only one of the bases on which we are introducing
12 it and we will definitely tie in all these statements
13 later with evidence. I will read only the beginning
14 of the statement up to Appendix I on exhibit 2319-D --
15 up to Appendix I.

16 THE PRESIDENT: We will have to deal with
17 Mr. Carr's objection. These Japanese delegates could
18 only speak from information about these matters. It is
19 hearsay, but it is not inadmissible for that reason.
20 The objection is overruled.

21 MR. LAZARUS: Thank you, sir.

22 CLERK OF THE COURT: Defense document 200-D
23 will be given exhibit No. 2319-D.

24 Whereupon, the document above re-
25 ferred to was marked defense exhibit No.

17,412

1 2319-D and received in evidence.)

2 MR. LAZARUS: (Reading)

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1 "The statement of Mr. HANIHARA was as
2 follows:

3 "'It does not necessarily follow that be-
4 cause a certain principle is accepted, it should be
5 applied in all cases immediately and without quali-
6 fication. In proceeding to its practical application
7 we must not lose sight of particular facts and cir-
8 cumstances that surround each individual case.

9 While constantly keeping the accepted principle in
10 view, we should go forward step by step toward its
11 complete realization, in such a manner as will main-
12 tain due harmony with the actual situation prevail-
13 ing in each instance.

14 "'I should state in all frankness that the
15 stationing of our troops and police in some parts
16 of China is solely due to our instinct for self-
17 protection. It is admittedly a costly and thankless
18 undertaking to maintain our troops and police in a
19 foreign land. We should only be too glad to be
20 relieved of that responsibility, if the efficient
21 system of protection and control over our nationals
22 resident in China were in operation.

23 "'In this connection, I can only repeat
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1 the significant fact that there exists a state of
2 affairs in China, which, apart from the question
3 of treaty rights, renders necessary the presence of
4 foreign troops in the very capitol of China.

5 "With reference to the Shantung railway
6 guards, China has declared her intention to send a
7 suitable force of Chinese police for the protection
8 of the Railway. She has, however, so far failed to
9 send any such police force to whom the Japanese
10 troops can actually hand over the duties.

11 "Turning to the subject of the South
12 Manchurian railway guards, Mr. Sze's observation
13 on the interpretation of the Additional Agreement
14 to the Treaty of 1905 seems to us hardly convincing.
15 The fact pointed out by the Chinese Delegation that
16 Russia has withdrawn her troops from Manchuria
17 apparently refers to the condition of things created
18 by the existing anomalous situation in Russia. It
19 does not prove that Russia has definitely agreed
20 to the withdrawal of her troops as is contemplated
21 in the Sino-Japanese Agreement of 1905.

22 "That Agreement also provides that when
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1 tranquility shall have been re-established in Man-
2 churia and when China shall have become herself
3 capable of affording full protection to the lives
4 and property of foreigners, Japan will withdraw her
5 railway guards simultaneously with Russia. Refer-
6 ring to that provision, I would like to invite the
7 attention of the Committee to the actual conditions
8 described in the written statement which I shall
9 presently lay before you. (See Appendix I.)

10 "As for the contention that China should
11 be given an opportunity of proving her ability to
12 maintain peace and order in Manchuria, the reply is
13 obvious: Japanese interests and Japanese security
14 are matters of such importance that she (Japan)
15 can not afford to take obvious risks. By taking
16 such chances as are suggested we should do no good
17 either to China or to ourselves. We should not
18 pander to a sentimental idea at the risk of creating
19 grave international difficulties in a region which
20 has already been the source of a life-and-death
21 struggle on the part of Japan, in a war which did
22 more to preserve the integrity and independence of
23 China than perhaps any other that has ever been
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1 fought.

2 "With regard to the stationing of Japanese
3 troops at Hankow, I believe that I have made
4 our position sufficiently clear at a previous meet-
5 ing of the Committee, and I shall not attempt to
6 repeat it. I would only add that in many cases of
7 local disturbances in and around Hankow the menace
8 to the security of foreign communities in general
9 assumed so serious a proportion that those various
10 communities organized volunteer corps for their self-
11 protection, and that the Japanese garrison was called
12 upon to extend active assistance and cooperation to
13 the foreign volunteer corps.
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15 "It may not be out of place to give here
16 a short account of the deplorable condition of dis-
17 order and lawlessness in China proper. (See Appen-
18 dix II.)

19 "In connection with the subject of Japanese
20 troops stationed along the Chinese Eastern
21 Railway, criticisms have been made by the Chinese
22 Delegation on the continued presence of Japanese
23 expeditionary forces in Siberia. The Japanese
24 Delegation desires to reserve the discussion of this
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1 question for a suitable opportunity which will
2 later on be afforded by the Conference. For the
3 present, I shall content myself by pointing out that
4 the stationing of Japanese troops along the Chinese
5 Eastern Railway is due to the Interallied Agreement
6 of 1919, in which China participated, and that those
7 troops will be withdrawn immediately upon the evacua-
8 tion of the Maritime Province by Japanese forces."

9
10 I omit reading the appendices.

11 We now invite the Tribunal's attention to
12 the totals in that appendices.

13 We next offer in evidence defense document
14 200-E, being a further excerpt from the previous
15 exhibit.

16 THE PRESIDENT: Admitted on the usual terms.

17 CLERK OF THE COURT: Defense document 200-E
18 will be exhibit No. 2319-E.

19 (Whereupon, the document above re-
20 ferred to was marked defense exhibit No.
21 2319-E and received in evidence.)

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1 MR. LAZARUS: (Reading) "BARON SHIDEHARA
2 said there was a question he wished to raise in con-
3 nection with the matters discussed relating to the
4 open door. He then made the following statement:

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5 "The Japanese Delegation understands that
6 one of the primary objects which the present Conference
7 on Far Eastern questions has in view is to promote
8 the general welfare of the Chinese people and, at the
9 same time, of all nations interested in China. For
10 the realization of that desirable end, nothing is of
11 greater importance than the development and utiliza-
12 tion of the unlimited natural resources of China.

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13 "It is agreed on all sides that China is
14 a country with immense potentialities. She is richly
15 endowed by nature with arable soil, with mines and with
16 raw materials of various kinds. But those natural
17 resources are of little practical value, so long as
18 they remain undeveloped and unutilized. In order to
19 make full use of them, it seems essential that China
20 shall open her own door to foreign capital and to
21 foreign trade and enterprise.

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22 "Touching on this subject, Mr. Sze, on
23 behalf of the Chinese Delegation, made an important
24 statement to the full Committee on November 16th,
25 declaring that "China wishes to make her vast natural

1 resources available to all people who need them."
2 That statement evidently represents the wisdom and
3 foresight of China, and the Japanese Delegation is
4 confident that the principle which it enunciated will
5 be carried out to its full extent.

6 "It is to be hoped that, in the application
7 of that principle, China may be disposed to extend to
8 foreigners, as far as possible, the opportunity of
9 cooperation in the development and utilization of
10 China's natural resources. Any spontaneous declara-
11 tion by China of her policy in that direction will be
12 received with much gratification by Japan and also,
13 no doubt, by all other nations interested in China.
14 Resolutions which have hitherto been adopted by this
15 Committee have been uniformly guided by the spirit of
16 self-denial and self-sacrifice on the part of foreign
17 Powers in favor of China. The Japanese Delegation
18 trusts that China, on her part, will not be unwilling
19 to formulate a policy which will prove of consider-
20 able benefit no less to China herself than to all
21 nations!"

22 We next offer in evidence defense document
23 200-F being a further excerpt from the previous ex-
24 hibit.

25 GENERAL VASILIEV: If the Court please,

1 considering the importance of the issue raised, I would
2 like to make objections. Though the Soviet prosecu-
3 tion in its opening statement mentioned the period of
4 the Japanese intervention in Siberia in 1918-1921,
5 it was mentioned as an historical fact of common
6 knowledge, an historic forerunner of later Japanese
7 aggression. However, in conformity with the principle
8 here accepted, we took into consideration that the
9 event took place in the period not covered by the
10 Indictment and the accused were not charged with it.
11 Therefore, there is no need for the defense to try
12 to disprove it. If the document is to be admitted
13 dealing with some specific aspect of the intervention
14 it would mean that the Tribunal decided to deal the
15 the period of 1918-1921 not covered by the Indictment
16 and especially to inquire into issues connected with
17 the Japanese intervention in Soviet Siberia. In such
18 case we shall have to submit considerable evidence
19 which is in our possession dealing with the issue and
20 the innumerable crimes perpetrated by the Japanese
21 during the intervention against the Russian people.
22 Moreover, it must be taken into consideration that
23 Baron SHIBEHARA is not a witness on this issue; neither
24 is he an eye witness, and he does not speak of his own
25 actions or somebody else's actions but deals with the

1 problem in a general way. As far as we know Baron
2 SHIDHARA is not an authority on history or on inter-
3 national law and his conclusions as to the aims and
4 nature of the Japanese intervention have no value
5 whatsoever. Therefore, I object to the presentation
6 of this document and respectfully request the Tribunal
7 not to admit it.

8 THE PRESIDENT: Captain Lazarus.

9 MR. LAZARUS: Mr. President, the prosecutor
10 himself has just stated that they referred to this
11 incident as historical background, and they call it
12 the historical forerunner of later Japanese aggres-
13 sion against Russia. Now, as I said in answer to
14 Mr. Comyns Carr yesterday, that is their side of the
15 story. Now it is our turn to tell our side. We are
16 giving our side of this historical background and
17 we intend to show and we will show -- we have the
18 evidence to show -- that Japan never aggressed against
19 Russia. On the contrary, it was always the other way
20 around. When we seek to give historical background
21 just as the prosecution did, that doesn't mean that
22 is going to make an issue of the case and extend it
23 back to 1928. We are simply doing what the prosecu-
24 tion did and we respectfully request that we be per-
25 mitted to put in our historical background. It will

1 not be necessary on the part of the prosecution to
2 adduce further evidence.

3 THE PRESIDENT: Baron SHIDEHARA was the
4 spokesman of Japan on that occasion and we must take
5 it he had a mandate to say what he did.

6 MR. LAZARUS: That is correct, sir.

7 THE PRESIDENT: He was entitled to state
8 Japan's attitude and the facts upon which that attitude
9 was based. So far as the facts went, his statement
10 was hearsay but the Charter admits that. The only
11 question is whether what he said is relevant to any
12 issue that we have to determine. We have admitted
13 many documents in the last two days with no great
14 certainty as to their relevancy and we have made reser-
15 vations. It may be that this evidence will justify
16 evidence in rebuttal if it can be given, but even if
17 it cannot be given that does not shut out material
18 evidence for the defense. We have decided to admit
19 the document with the usual reservations.

20 CLERK OF THE COURT: Defense document 200-F
21 will receive exhibit No. 2319F.

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 2319-F and received in evidence.)

25 MR. LAZARUS: In the light of what Mr. Comyns

1 Carr said, Mr. President, I must again state the
2 defense's position to the Tribunal. At no time will
3 we seek or will we even try to embarrass any one of
4 our Allied nations. There is certain evidence that
5 must be adduced and we are doing our duty as attorneys
6 to present it.

7 THE PRESIDENT: The question is not the
8 defense's motive but whether the evidence has probative
9 value.

10 MR. LAZARUS: (Reading) "Baron SHIDHARA
11 said that, if the discussion on the Siberian problem
12 was to be proceeded with, it might be of interest for
13 the Committee to know exactly the intentions and aims
14 of Japan in regard to Siberia, and, with the permis-
15 sion of the Chairman and of the Committee, he would
16 make a concise statement in this respect.

17 "He then read as follows:

18 "The Military expedition of Japan to Siberia
19 was originally undertaken in common accord and in
20 cooperation with the United States in 1918. It was
21 primarily intended to render assistance to the Czechoslovak
22 troops who in their homeward journey across
23 Siberia from European Russia found themselves in grave
24 and pressing danger at the hands of hostile forces
25 under German command. The Japanese and American

1 expeditionary forces, together with other Allied
2 troops, fought their way from Vladivostok far into the
3 region of the Amur and the Trans-Baikal Provinces to
4 protect the railway lines which afforded the sole
5 means of transportation of the Czechoslovak troops
6 from the interior of Siberia to the port of Vladivostok.
7 Difficulties which the Allied forces had to encounter
8 in their operations in the severe cold winter of Siberia
9 were immense.

10 "!In January, 1920, the United States decided
11 to terminate its military undertaking in Siberia, and
12 ordered the withdrawal of its forces. For some time
13 thereafter, Japanese troops continued alone to carry
14 out the duty of guarding several points along the Trans-
15 Siberian Railway in fulfillment of interallied arrange-
16 ments, and of affording facilities to the returning
17 Czechoslovaks.

18 "!The last column of Czechoslovak troops
19 safely embarked from Vladivostok in September, 1920.
20 Ever since then Japan has been looking forward to an
21 early moment for the withdrawal of her troops from
22 Siberia. The maintenance of such troops in a foreign
23 land is for her a costly and thankless undertaking,
24 and she will be only too happy to be relieved of such
25 responsibility. In fact, the evacuation of the

1 Trans-Baikal and the Amur Provinces was already com-
2 pleted in 1920. The only region which now remains to
3 be evacuated is the southern portion of the Maritime
4 Province around Vladivostock and Nikolsk.

5 "It will be appreciated that for Japan the
6 question of the withdrawal of troops from Siberia is
7 not quite as simple as it was for other Allied Powers.
8 In the first place, there are a considerable number of
9 Japanese residents who had lawfully and under guarantees
10 of treaty established themselves in Siberia long
11 before the Bolshevik eruption, and were there entirely
12 welcomed. In 1917, prior to the joint American-
13 Japanese military enterprise, the number of such resi-
14 dents was already no less than 9717. In the actual
15 situation prevailing there, those Japanese residents
16 can hardly be expected to look for the protection of
17 their lives and property to any other authorities than
18 Japanese troops. Whatever districts those troops have
19 evacuated in the past have fallen into disorder, and
20 practically all Japanese residents have had precipi-
21 tately to withdraw, to seek for their personal safety.
22 In so withdrawing, they have been obliged to leave
23 behind large portions of their property, abandoned and
24 unprotected, and their homes and places of business
25 have been destroyed. While the hardships and losses

1 thus caused the Japanese in the Trans-Baikal and the
2 Amur Provinces have been serious enough, more extensive
3 damages are likely to follow from the evacuation of
4 Vladivostok in which a larger number of Japanese have
5 always been resident and a greater amount of Japanese
6 capital invested.

7 "There is another difficulty by which Japan
8 is faced in proceeding to the recall of her troops
9 from the Maritime Province. Due to geographical
10 proximity the general situation in the districts
11 around Vladivostok and Nikolsk is bound to affect the
12 security of the Korean frontier. In particular it is
13 known that these districts have long been the base of
14 Korean conspiracies against Japan. Those hostile
15 Koreans, joining hands with lawless elements in Russia,
16 attempted in 1920 to invade Korea through the Chinese
17 territory of Chientao. They set fire to the Japanese
18 Consulate at Hunchun and committed indiscriminate acts
19 of murder and pillage. At the present time they are
20 under the effective control of Japanese troops stationed
21 in the Maritime Province, but they will no doubt renew
22 the attempt to penetrate into Korea at the first
23 favorable opportunity that may present itself.

24 "Having regard to those considerations, the
25 Japanese Government have felt bound to exercise

1 precaution in carrying out the contemplated evacu-
2 ation of the Maritime Province. Should they take hasty
3 action without adequate provision for the future they
4 would be delinquent in their duty of affording protec-
5 tion to a large number of their nationals resident in
6 the districts in question and of maintaining order and
7 security in Korea.

8 "!It should be made clear that no part of the
9 Maritime Province is under Japan's military occupation.
10 Japanese troops are still stationed in the southern
11 portion of that Province, but they have not set up any
12 civil or military administration to displace local
13 authorities. Their activity is confined to measures of
14 self-protection against the menace to their own safety
15 and to the safety of their country and nationals. They
16 are not in occupation of those districts any more than
17 American or other Allied troops could be said to have
18 been in occupation of the places in which they were
19 formerly stationed.

20 "!The Japanese Government are anxious to
21 see an orderly and stable authority speedily re-
22 established in the Far Eastern possessions of Russia.
23 It was in this spirit that they manifested a keen
24 interest in the patriotic but ill-fated struggle of
25 Admiral Kolchak. They have shown readiness to lend

1 their good offices for prompting the reconciliation
2 of various political groups in Eastern Siberia. But
3 they have carefully refrained from supporting one
4 faction against another. It will be recalled, for
5 instance, that they withheld all assistance from
6 General Rozanow against the revolutionary movements
7 which led to his overthrow in January, 1920. They
8 maintained an attitude of strict neutrality and re-
9 fused to interfere in those movements, which it
10 would have been quite easy for them to suppress if they
11 had so desired.

12 "In relation to this policy of noninterven-
13 tion, it may be useful to refer briefly to the past
14 relations between the Japanese authorities and Ataman
15 Semenoff, which seem to have been a source of popular
16 misgiving and speculation. It will be remembered that
17 the growing rapprochement between the Germans and the
18 Bolshevik Government in Russia in the early part of
19 1918 naturally gave rise to apprehensions in the Allied
20 countries that a considerable quantity of munitions
21 supplied by those countries and stored in Vladivostok
22 might be removed by the Bolsheviks to European Russia
23 for the use of the Germans. Ataman Semenoff was then
24 in Siberia and was organizing a movement to check such
25 Bolshevik activities and to preserve order and stability

1 in that region. It was in this situation that Japan,
2 as well as some of the Allies, began to give support
3 to the Cossack chief. After a few months, such
4 support by the other Powers was discontinued, but the
5 Japanese were reluctant to abandon their friend, whose
6 efforts in the Allied cause they had originally encour-
7 aged, and they maintained for some time their connec-
8 tion with Ataman Semenoff. They had, however, no
9 intention whatever of interfering in the domestic
10 affairs of Russia, and when it was found that the
11 assistance rendered to the Ataman was likely to compli-
12 ciate the internal situation in Siberia, they terminated
13 all relations with him and no support of any kind has
14 since been extended to him by the Japanese authorities.

15 "The Japanese Government are now seriously
16 considering plans which would justify them in carry-
17 ing out their decision of the complete withdrawal of
18 Japanese troops from the Maritime Province with reason-
19 able precaution for the security of Japanese residents
20 and of the Korean frontier regions. It is for this
21 purpose that negotiations were opened some time ago
22 at Dairen between the Japanese representatives and
23 the agents of the Chita Government.

24 "Those negotiations at Dairen are in no way
25 intended to secure for Japan any right or advantage
of an exclusive nature. They have been solely

1 actuated by a desire to adjust some of the more
2 pressing questions with which Japan is confronted in
3 relation to Siberia. They have essentially in view
4 the conclusion of provisional commercial arrangements,
5 the removal of the existing menace to the security
6 of Japan and to the lives and property of Japanese
7 residents in Eastern Siberia, the provision of guar-
8 antics for the freedom of lawful undertakings in that
9 region, and the prohibition of Bolshevik propaganda
10 over the Siberian border. Should adequate provisions
11 be arranged on the line indicated, the Japanese Govern-
12 ment will at once proceed to the complete withdrawal
13 of Japanese troops from the Maritime Province.

14 "The occupation of certain points in the
15 Russian Province of Sakhalin is wholly different
16 both in nature and in origin, from the stationing of
17 troops in the Maritime Province. History affords few
18 instances similar to the incident of 1920 at
19 Nikolteivsk, where more than seven hundred Japanese,
20 including women and children, as well as the duly
21 recognized Japanese Consul and his family and his
22 official staff, were cruelly tortured and massacred.
23 No nation worthy of respect will possibly remain for-
24 bearing under such a strain of provocation. Nor was
25 it possible for the Japanese Government to disregard

1 the just popular indignation aroused in Japan by
2 the incident. Under the actual condition of things,
3 Japan found no alternative but to occupy, as a measure
4 of reprisal, certain points in the Russian Province
5 of Sakhalin in which the outrage was committed, rendering
6 the establishment in Russia of a responsible authority
7 with whom she can communicate in order to obtain due
8 satisfaction.

9 "Nothing is further from the thought of the
10 Japanese Government than to take advantage of the
11 present helpless condition of Russia for prosecuting
12 selfish designs. Japan recalls with deep gratitude
13 and appreciation the brilliant role which Russia played
14 in the interest of civilization during the earlier
15 stage of the Great War. The Japanese people have shown
16 and will continue to show every sympathetic interest
17 in the efforts of patriotic Russians aspiring to the
18 unity and rehabilitation of their country. The
19 military occupation of the Russian Province of Sakhalin
20 is only a temporary measure, and will naturally come
21 to an end as soon as a satisfactory settlement of
22 the question shall have been arranged with an orderly
23 Russian Government.

24 " In conclusion, the Japanese Delegation is
25 authorized to declare that it is the fixed and settled

1 policy of Japan to respect the territorial integrity
2 of Russia and to observe the principle of nonintervention
3 in the internal affairs of that country, as
4 well as the principle of equal opportunity for the
5 commerce and industry of all nations in every part
6 of the Russian possessions."

7 We next offer in evidence defense document
8 200-G, being a further excerpt from the previous
9 defense exhibit.

10 JUDGE HSIANG: We object to the admission
11 of the document concerning the so-called treaty of
12 1915 between China and Japan on the grounds of im-
13 materiality and irrelevancy. The treaty itself is
14 not valid. This treaty has never received legislative
15 concurrence which is required to give validity to
16 treaties according to Article 35 of the Provisional
17 Constitution of China then in force. This was one
18 of the reasons why China consistently refused to
19 recognize the validity of this treaty at the Paris
20 Peace Conference and also at the Washington Conference
21 on the limitation of armaments.

22 THE PRESIDENT: Well, our decision on
23 General Vasiliev's objection covers this. It is
24 admitted on the same terms and with the same reser-
25 vations.

1 CLERK OF THE COURT: Defense document 200-G
2 will receive exhibit No. 2319-G.

3 (Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 2319-G and received in evidence.)

6 THE PRESIDENT: If you come to any expressions
7 offensive to any country you may omit them because
8 they don't help us and we shall disregard them.

9 MR. LAZARUS: I most certainly shall, your
10 Honor.

11 THE PRESIDENT: We will disregard any offensive
12 expressions by Baron SHIDEHARA or anybody else so far
13 as they are just offensive and nothing more.

14 We will adjourn until half past one.

15 (Whereupon, at 1200, a recess was
16 taken.)

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AFTERNOON SESSION

3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Mr. Lazarus.

8 Mr. LAZANUS: Reading from document 200-G,
9 Mr. President, which is defense exhibit 2319-G:

10 "The Chairman then said that he understood that
11 the next subject to be brought up was the matter which
12 had been generally called the 'Twenty-one Demands,'
13 and he believed an opportunity had been reserved for
14 the Japanese Delegation to speak upon that subject.

15 "Baron SHIDEHARA read the following statement:

16 ":At a previous session of this Committee,
17 the Chinese Delegation presented a statement urging
18 that the Sino-Japanese Treaties and Notes of 1915 be
19 reconsidered and cancelled. The Japanese Delegation,
20 while appreciating the difficult position of the Chinese
21 Delegation, does not feel at liberty to concur in the
22 procedure now resorted to by China with a view to can-
23 cellation of international engagements which she entered
24 into as a free sovereign nation.

25 "It is presumed that the Chinese Delegation

1 has no intention of calling in question the legal validity
2 of the compacts of 1915, which were formally signed
3 and sealed by the duly authorized representatives of
4 the two Governments, and for which the exchange of
5 ratifications was effected in conformity with established
6 international usages. The insistence by China
7 on the cancellation of those instruments would in itself
8 indicate that she shares the view that the compacts
9 actually remain in force and will continue to
10 be effective, unless and until they are cancelled.

11 "It is evident that no nation can have given
12 ready consent to cessions of its territorial or other
13 rights of importance. If it should once be recognized
14 that rights solemnly granted by treaty may be
15 revoked at any time on the ground that they were con-
16 ceded against the spontaneous will of the grantor, an
17 exceedingly dangerous precedent will be established,
18 with far-reaching consequences upon the stability of
19 the existing international relations in Asia, in Europe
20 and everywhere.

21 "The statement of the Chinese Delegation
22 under review declares that China accepted the Japanese
23 demands in 1915, hoping that a day would come when she
24 should have the opportunity of bringing them up for
25 reconsideration and cancellation. It is, however,

1 difficult to understand the meaning of this assertion.
2 It cannot be the intention of the Chinese Delegation
3 to intimate that China may conclude a treaty, with any
4 thought in mind of breaking it at the first opportunity.

5 "The Chinese Delegation maintains that the
6 Treaties and Notes in question are derogatory to the
7 principles adopted by the Conference with regard to
8 China's sovereignty and independence. It has, however,
9 been held by the Conference on more than one occasion
10 that concessions made by China ex contractu, in the
11 exercise of her own sovereign rights, cannot be re-
12 garded as inconsistent with her sovereignty and inde-
13 pendance.

14 "It should also be pointed out that the term
15 "Twenty-One demands," often used to denote the Treaties
16 and Notes of 1915, is inaccurate and grossly misleading.

17 "It may give rise to an erroneous impression
18 that the whole original proposals of Japan had been
19 pressed by Japan and accepted in toto by China. As a
20 matter of fact, not only "Group V" but also several
21 other matters contained in Japan's first proposals were
22 eliminated entirely or modified considerably, in defer-
23 ence to the wishes of the Chinese Government, when the
24 final formula was presented to China for acceptance.

25 Official records published by the two Governments

1 relating to those negotiations will further show that
2 the most important terms of the Treaties and Notes,
3 as signed, had already been virtually agreed to by the
4 Chinese negotiators before the delivery of the ulti-
5 matum, which then seemed to the Japanese Government
6 the only way of bringing the protracted negotiations
7 to a speedy close.

8 " The Japanese Delegation cannot bring itself
9 to the conclusion that any useful purpose will be
10 served by research and re-examination at this Confer-
11 ence of old grievances which one of the nations repre-
12 sented here may have against another. It will be more
13 in line with the high aim of the Conference to look
14 forward to the future with hope and with confidence.
15

16 " Having in view, however, the changes which
17 have taken place in the situation since the conclusion
18 of the Sino-Japanese Treaties and Notes of 1915, the
19 Japanese Delegation is happy to avail itself of the
20 present occasion to make the following declaration:

21 " 1. Japan is ready to throw open to the
22 joint activity of the International Financial Consortium
23 recently organized, the right of option granted exclu-
24 sively in favor of Japanese capital, with regard, first,
25 to loans for the construction of railways in South
Manchuria and Eastern Inner Mongolia, and, second, to

1 loans to be secured on taxes in that region; it being
2 understood that nothing in the present declaration shall
3 be held to imply any modification or annulment of the
4 understanding recorded in the officially announced
5 notes and memoranda which were exchanged among the
6 Governments of the countries represented in the Con-
7 sortium and also among the national financial groups
8 composing the Consortium, in relation to the scope of
9 the joint activity of that organization.

10 "12. Japan has no intention of insisting on
11 her preferential right under the Sino-Japanese arrange-
12 ments in question concerning the engagement by China
13 of Japanese advisers or instructors on political, finan-
14 cial, military or police matters in South Manchuria.

15 "13. Japan is further ready to withdraw the
16 reservation which she made, in proceeding to the sig-
17 nature of the Sino-Japanese Treaties and Notes of 1915,
18 to the effect that Group V of the original proposals
19 of the Japanese Government would be postponed for
20 future negotiations.

21 "14. It would be needless to add that all matters
22 relating to Shantung contained in those Treaties and
23 Notes have now been definitely adjusted and disposed
24 of.

25 "15. In coming to this decision, which I have had

1 the honor to announce, Japan has been guided by a spirit
2 of fairness and moderation, having always in view
3 China's sovereign rights and the principle of equal
4 opportunity."
5

6 And now the last excerpt from this book,
7 we offer defense document 200-H.
8

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 200-H
11 will receive exhibit No. 2319-H.
12

13 (Whereupon, the document above re-
14 ferred to was marked defense exhibit No.
15 2319-H, and was received in evidence.)
16

17 MR. LAZARUS: The second paragraph on the
18 first page.
19

20 "THE CHAIRMAN: At the last Plenary Session
21 of the Conference I had the pleasure of stating that
22 the Chinese and Japanese Delegates had informed me
23 that they had agreed upon a settlement of the contro-
24 versy relating to Shantung. I now have the pleasure
25 of stating that I am informed by the Chinese and
Japanese representatives that the proposed Treaty on
the question of Shantung has been agreed upon, the
form of text approved, and the Treaty is ready for
signature.
26

"I am directed by the Committee on Pacific

1 and Far Eastern Questions to read, for the purpose of
2 having the statements formally placed upon the records
3 of the Conference, the following declarations with
4 respect to the so-called Twenty-One Demands or the
5 Sino-Japanese Treaties and Notes of 1915."

6 Skipping to page 5, at the bottom of the page:

7 "Thereupon, on behalf of the American Govern-
8 ment, I stated to the Committee the position of the
9 Government of the United States:

10 "The important statement made by Baron
11 SHIDEHARA on behalf of the Japanese Government makes
12 it appropriate that I should refer to the position of
13 the Government of the United States as it was set forth
14 in identical notes addressed by that Government to
15 the Chinese Government and to the Japanese Government
16 on May 13, 1915.

17 "The note to the Chinese Government was as
18 follows:

19 "In view of the circumstances of the nego-
20 tiations which have taken place and which are now
21 pending between the Government of China and the Govern-
22 ment of Japan and of the agreements which have been
23 reached as a result thereof, the Government of the
24 United States has the honor to notify the Government
25 of the Chinese Republic that it cannot recognize any

1 agreement or undertaking which has been entered into
2 or which may be entered into between the Governments
3 of China and Japan impairing the treaty rights of the
4 United States and its citizens in China, the politi-
5 cal or territorial integrity of the Republic of China,
6 or the international policy relative to China commonly
7 known as the open door policy.

8 "An identical Note has been transmitted to
9 the Imperial Japanese Government."

10 "That statement was in accord with the his-
11 toric policy of the United States in its relation to
12 China, and its position as thus stated has been, and
13 still is, consistently maintained.

14 "It has been gratifying to learn that the
15 matters concerning Shantung, which formed the substance
16 of Group I of the original demands, and were the sub-
17 ject of the Treaty and Exchange of Notes with respect
18 to the Province of Shantung, have been settled to the
19 mutual satisfaction of the two parties by negotiations
20 conducted collaterally with this Conference, as reported
21 to the Plenary Session of February 1st.

22 "It is also gratifying to be advised by the
23 statement made by Baron SHIDEHARA, on behalf of the
24 Japanese Government, that Japan is now ready to with-
25 draw the reservation which she made, in proceeding to

the signature of the Treaties and Notes of 1915, to the
1 effect that Group V of the Original proposals of the
2 Japanese Government--namely, those concerning the em-
3 ployment of influential Japanese as political, finan-
4 cial and military advisers; land for schools and hos-
5 pitals; certain railways in South China; the supply
6 of arms, and the right of preaching--would be post-
7 poned for future negotiations. This definite with-
8 drawal of the outstanding questions under Group V re-
9 moves what has been an occasion for considerable appre-
10 hension on the part alike of China and of foreign na-
11 tions, which felt that the renewal of these demands
12 could not but prejudice the principles of the integ-
13 rity of China and of the open door.

15 "With respect to the Treaty and the Notes
16 concerning South Manchuria and Eastern Inner Mongolia,
17 Baron SHIDEHARA has made the reassuring statement that
18 Japan has no intention of insisting on a preferential
19 right concerning the engagement by China of Japanese
20 advisers or instructors on political, financial, mili-
21 tary or police matters in South Manchuria.

22 "Baron SHIDEHARA has likewise indicated the
23 readiness of Japan not to insist upon the right of
24 option granted exclusively in favor of Japanese capital
25 with regard, first, to loans for the construction of

1 railways in South Manchuria and Eastern Inner Mongolia;
2 and, second, with regard to loans secured on the taxes
3 of those regions; but that Japan will throw them open
4 to the joint activity of the International Financial
5 Consortium recently organized.

6 " As to this, I may say that it is doubtless
7 the fact that any enterprise of the character contem-
8 plated, which may be undertaken in these regions by
9 foreign capital, would in all probability be under-
10 taken by the Consortium. But it should be observed
11 that existing treaties would leave the opportunity
12 for such enterprises open on terms of equality to the
13 citizens of all nations. It can scarcely be assumed
14 that this general right of the treaty Powers in China
15 can be effectively restricted to the nationals of those
16 countries which are participants in the work of the
17 Consortium, or that any of the Governments which have
18 taken part in the organization of the Consortium would
19 feel themselves to be in a position to deny all rights
20 in the matter to any save the members of their respec-
21 tive national groups in that organization. I therefore
22 trust that it is in this sense that we may properly
23 interpret the Japanese Government's declaration of
24 willingness to relinquish its claim under the 1915
25 Treaties to any exclusive position with respect to

1 railway construction and to financial operations se-
2 cured upon local revenues, in South Manchuria and East-
3 ern Inner Mongolia.

4 "It is further to be pointed out that by
5 Articles II, III and IV of the Treaty of May 25, 1915,
6 with respect to South Manchuria and Eastern Inner
7 Mongolia, the Chinese Government granted to Japanese
8 subjects the right to lease land for building purposes,
9 for trade and manufacture, and for agricultural pur-
10 poses in South Manchuria, to reside and travel in
11 South Manchuria, and to engage in any kind of business
12 and manufacture there, and to enter into joint under-
13 takings with Chinese citizens in agriculture and sim-
14 ilar industries in Eastern Inner Mongolia.

15 "With respect to this grant, the Government of
16 the United States will, of course, regard it as not
17 intended to be exclusive, and, as in the past, will
18 claim from the Chinese Government for American citizens
19 the benefits accruing to them by virtue of the most
20 favored nation clauses in the treaties between the
21 United States and China.

22 "I may pause here to remark that the question
23 of the validity of treaties as between Japan and China
24 is distinct from the question of the treaty rights of the
25 United States under its treaties with China; those

1 rights have been emphasized and consistently asserted
2 by the United States.

3 ''In this, as in all matters similarly affect-
4 ing the general right of its citizens to engage in
5 commercial and industrial enterprises in China, it has
6 been the traditional policy of the American Govern-
7 ment to insist upon the doctrine of equality for the
8 nationals of all countries, and this policy, together
9 with the other policies mentioned in the Note of May
10 13, 1915, which I have quoted, are consistently main-
11 tained by this Government. I may say that it is with
12 especial pleasure that the Government of the United
13 States finds itself now engaged in the act of reaffirm-
14 ing and defining, and I hope that I may add, revital-
15 ising, by the proposed Nine Power Treaty, these policies
16 with respect to China.'

17 ''After these statements it was proposed and
18 decided in the Committee that the statements thus made
19 should be reported to the Conference to be spread upon
20 its record. In the course of the vote Mr. Koo stated
21 in the Committee that his colleagues and he himself
22 desired to indorse the Chairman's suggestion that all
23 of the statements on this very important question should
24 be spread upon the records of the Conference, it being
25 understood of course that the Chinese Delegation

1 reserved their right to seek a solution on all future
2 appropriate occasions concerning those portions of the
3 Treaties and Notes of 1915 which did not appear to
4 have been expressly relinquished by the Japanese
5 Government. The Chairman stated:

6 "Of course it is understood that the
7 rights of all Powers are reserved with respect to the
8 matters mentioned by Mr. Koo."

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1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: Your Honor, may I point
3 out that my friend did not read the statement of the
4 Chinese case in answer to the statement of the
5 Japanese case, which he did read, which is to be
6 found on pages 3, 4 and 5 of this document. I do
7 not propose to ask that they should be read now; but
8 if the Tribunal should ultimately decide to pay any
9 attention to this document it will be necessary to
10 read the Chinese side as well as the Japanese side.

11 MR. LAZARUS: The Tribunal will note that I
12 also omitted the Japanese statement that is contained
13 here. They were both omitted in order to save time
14 because they have been referred to previously, or
15 similar matters have been referred to previously.

16 MR. COMYNS CARR: My friend is mistaken. He
17 did read the Japanese side in the previous document,
18 which is repeated here. The Chinese side has never
19 been read.

20 MR. LAZARUS: As the prosecution did for the
21 last eight months, we read only those parts that we
22 want to read; and, as they told us then, you can read
23 what you want when your turn comes.

24 We next offer for identification only the
25 book entitled "The Washington Conference, Treaties

1 and Resolutions," compiled and edited by the Japanese
2 Government; and the excerpt therefrom, defense document
3 237, is offered in evidence as a defense exhibit. I
4 shall read only Resolution 9 on page 2.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document No. 237
7 is marked exhibit No. 2320 for identification only,
8 and the excerpt therefrom, bearing the same document
9 number, will receive exhibit No. 2320-A.

10 (Whereupon, defense document No. 237
11 was marked defense exhibit No. 2320 for identi-
12 fication; and the excerpt therefrom was marked
13 defense exhibit No. 2320-A and received in
14 evidence.)

15 MR. LAZARUS: (Reading) "No. 9. Resolution
16 Regarding the Reduction of Chinese Military Forces.

17 "Whereas the Powers attending this Conference
18 have been deeply impressed with the severe drain on
19 the public revenue of China through the maintenance in
20 various parts of the country, of military forces,
21 excessive in number and controlled by the military
22 chiefs of the provinces without coordination,

23 "And whereas the continued maintenance of
24 these forces appears to be mainly responsible for
25 China's present unsettled political conditions,

1 "And whereas it is felt that large and prompt
2 reductions of these forces will not only advance the
3 cause of China's political unity and economic development
4 but will hasten her financial rehabilitation;

5 "Therefore, without any intention to interfere
6 in the internal problems of China, but animated by the
7 sincere desire to see China develop and maintain for
8 herself an effective and stable government alike in
9 her own interest and in the general interest of trade;

10 "And being inspired by the spirit of this
11 Conference whose aim is to reduce, through the limitation
12 of armament, the enormous disbursements which
13 manifestly constitute the greater part of the encumbrance
14 upon enterprise and national prosperity;

15 "It is resolved: That this Conference express
16 to China the earnest hope that immediate and effective
17 steps may be taken by the Chinese Government to reduce
18 the aforesaid military forces and expenditures.

19 "Adopted by the Conference on the Limitation
20 of Armament at the Fifth Plenary Session, February 1st,
21 1922."

22 In connection with the Washington Conference
23 and other matters contained therein, we now offer in
24 evidence defense document 202-L-2, which is an excerpt
25 from defense exhibit which was offered for identification

17, '50

only, No. 2290.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Defense document 202--

3 BRIGADIER NOLAN: Excuse me, please.

4 CLERK OF THE COURT: Pardon me.

5 BRIGADIER NOLAN: Mr. President, may I
6 point out that the document which is now being offered,
7 No. 202-L-2, is in no better position than the document
8 which was rejected by the Court yesterday, which was
9 No. 202-D-1. It is, again, an excerpt from the book
10 of Mr. John B. Powell, and is objected to on the same
11 grounds and for the same reasons which were urged in
12 respect of document 202-D-1.

13 MR. LAZARUS: Mr. President, yesterday the
14 Tribunal rejected the excerpt on the grounds that it
15 contained, as pointed out by the prosecution, opinions
16 of the author.

17 THE PRESIDENT: Opinions gathered by the
18 author, I think.

19 MR. LAZARUS: Yes, sir, Mr. President.
20 This excerpt, I respectfully point out to the Tribunal,
21 does not contain opinions, either his own or gathered
22 by him, but contains facts. It contains facts, for
23 instance, on the abrogation of the Anglo-Japanese
24 Alliance: not his opinions as to why, but the facts
25

1 on how it came about.

2 THE PRESIDENT: What authority is he? He
3 is not a historian.

4 MR. LAZARUS: No, Mr. President, but he
5 certainly is anything that the prosecution introduced
6 him to this Court as being, a reporter who has been
7 a student of Chinese affairs for this many years; and
8 here he is doing no more than he did on the stand,
9 reporting the facts that he knew.

10 When Mr. Powell was on the stand on behalf
11 of the prosecution, he even reported things that he
12 had heard as rumors.

13 THE PRESIDENT: As a witness, he spoke of
14 what he observed in China. Here he is writing a
15 book about politics.

16 MR. LAZARUS: But he reports the facts that
17 he--

18 THE PRESIDENT: This is not standard history.
19 It is just a journalist's account.

20 MR. LAZARUS: Prosecution also brought in
21 Mr. Goette, as well as Mr. Powell, who told what they
22 had known and what they had observed in their careers
23 as reporters. This man is a reporter, and he observes
24 here and reports what he knows about China and how
25 the Washington Conference settled matters about China.

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1 Mr. President, we must accept it in the
2 same light we did before.

3 THE PRESIDENT: The fact that he was a
4 witness does not improve your claim to have his
5 book received.

6 MR. LAZARUS: That is true, Mr. President,
7 but if he were here he would be able to testify to
8 these facts the same as he testified to others,
9 Mr. President. We are asking no more than that, sir.
10 Mr. President, may I point out that there was per-
11 mitted to be introduced an article written by
12 Mr. Powell that had appeared in the Chicago Tribune,
13 that was introduced several months after Mr. Powell
14 had left the stand.

15 THE PRESIDENT: If I recall correctly, that
16 was about some atrocities committed in China.

17 MR. LAZARUS: That is right. He had
18 referred to it while he was on the stand.

19 THE PRESIDENT: You are asking us to
20 accept his political survey.

21 MR. LAZARUS: No, Mr. President. These
22 are facts, Mr. President, that he gathered while
23 being a reporter and are the identical types of
24 facts that he referred to while he was on the stand.
25 This is no more and no less, Mr. President, than

1 further testimony by this same witness the same as
2 if he had been on the stand at this time and we were
3 asking the questions.

4 THE PRESIDENT: If he had said these things
5 in the witness box we would have stopped him imme-
6 diately.

7 The objection is allowed.

8 MR. LAZARUS: Mr. President, then may we
9 have a subpoena for Mr. Powell?

10 THE PRESIDENT: If you apply in Chambers
11 for a subpoena for Mr. Powell to give this testi-
12 mony, I will reject your application.

13 MR. LAZARUS: May I point out, Mr. Presi-
14 dent, that your Honor --

15 THE PRESIDENT: I have given the decision.

16 MR. LAZARUS: Yes, sir.

17 MR. SMITH: Will your Honor hear me
18 briefly because a number of excerpts out of
19 Mr. Powell's book --

20 THE PRESIDENT: I cannot hear you Mr. Smith.
21 I have no power to revoke the decision of
22 the Tribunal. I have given it and it stands, Mr.
23 Smith. If you have excerpts to tender later we will
24 have to consider them on their merits, whatever they
25 may be.

1 MR. SMITH: Well, your Honor, I thought
2 probably you were making a general ruling, and I
3 simply wanted to point out that many of the ex-
4 cerpts deal with matters which personally happened
5 to Mr. Powell in China and things which he per-
6 sonally witnessed.

7 THE PRESIDENT: They may be in a different
8 category. This is a political survey and has been
9 rejected as such.

10 MR. LAZARUS: We next offer in evidence
11 another excerpt from this document, defense docu-
12 ment 202-D-3, Mr. President.

13 BRIGADIER NOLAN: Whatever might --

14 THE PRESIDENT: I know nothing about it,
15 Brigadier Nolan. You are talking over our heads
16 until we look at it. Yes, now we know, Brigadier
17 Nolan.

18 BRIGADIER NOLAN: Whatever might be said
19 in support of document 202-D-2, there is nothing
20 that could be said in support of 202-D-3, which is
21 merely a political plum that this gentleman has put
22 in his book which adds nothing to this case or the
23 evidence.

24 MR. LAZARUS: The "Washington Con-
25 ference is a very important document in this case.

1 The manner in which those terms were carried out
2 by various countries, including Japan, is of vital
3 importance in this case. Here we have factual
4 evidence that one of the countries did not carry
5 out its terms of this conference. The significance
6 of this and how other countries interpreted and
7 worked under the Washington Conference will be
8 pointed out later. This is one of the evidences
9 of factual carrying-out of this conference. And
10 may I point out in the third line, after the word
11 "Canton," I have stricken out the next seven words,
12 in conformity with the President's request this
13 morning that certain types of words should be
14 stricken.
15

16 THE PRESIDENT: The decision on defense
17 document 202-D-2 applies. The objection is up-
18 held.

19 MR. LAZARUS: That concludes my number of
20 documents, Mr. President. Mr. Yamaoka will con-
21 clude for the prosecution on this phase -- for the
22 defense rather. Sorry.
23
24
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1 THE PRESIDENT: Mr. Yamaoka.

2 MR. YAMAOKA: May it please the Tribunal,
3 we next offer in evidence defense document 40, being
4 the declaration of France, Great Britain, Italy,
5 Japan and Russia not to conclude a separate peace,
6 signed November 30, 1915, for the purpose of showing
7 that prosecution exhibit 51 containing a similar
8 agreement between Germany, Italy, and Japan is
9 nothing unusual between allies engaged in war and that
10 it is not necessarily evidence of conspiracy as
11 charged by the prosecution.

12 THE PRESIDENT: Admitted on the usual terms.

13 CLERK OF THE COURT: Defense document No. 40
14 will receive exhibit No. 2321.

15 (Whereupon, the document above
16 referred to was marked defense exhibit
17 No. 2321 and received in evidence.)

18 MR. YAMAOKA: With the Tribunal's permission
19 I shall read defense exhibit 2321.

20 (Reading) "Declaration upon which France,
21 Great Britain, Italy, Japan and Russia Agree not to
22 Conclude a Separate Peace. Signed in London in French,
23 30 November 1915 (4th year of Taisho)."

24 I shall skip the next prefatory three lines.

25 "The Italian Government having decided to

1 adhere to the Declaration made in London on the 5th
2 of September 1914 by the French, British and Russian
3 Governments, a declaration to which the Japanese
4 Government equally adhered dated the 19th of October
5 1915, the undersigned duly authorized by their re-
6 spective governments, made the following declaration:

7 "The French, British, Italian, Japanese and
8 Russian Governments mutually agree not to conclude a
9 separate peace during the course of the present war.
10 The five Governments agree that when the occasion
11 arises to discuss peace terms none of the allied
12 powers will be able to lay down peace conditions
13 without previous accord with each one of the other
14 allies. The undersigned in this faith have signed
15 the present declaration and have placed their seals
16 on it."

17 THE PRESIDENT: What point are you making
18 there, Mr. Yamaoka?

19 MR. YAMAOKA: As I alluded in my prefatory
20 remarks, Mr. President, we intend to tie this in
21 later to meet the charge of the prosecution that the
22 conclusion of the military alliance between Germany,
23 Italy and Japan, as well as the secret protocols or
24 agreements annexed thereto and the no separate peace
25 pact, all of which have been introduced into evidence

1 in the case, ostensibly in support of the conspiracy
2 counts, is not necessarily evidence of such conspir-
3 acy and that it is not an uncommon practice among
4 nations of the world to engage in such agreements as
5 between allies.

6 THE PRESIDENT: An agreement is a conspiracy
7 only if it involves something unlawful in the end or
8 the means. What is there unlawful in this pact you
9 have just read?

10 MR. YAMAOKA: We submit, your Honor, that
11 there is nothing unlawful in this agreement and
12 neither in the agreements alluded to.

13 THE PRESIDENT: The 1915 pact against
14 separate peace was lawful, therefore all subsequent
15 pacts are lawful. However, it is in there as evidence.

16 MR. YAMAOKA: For similar purposes and
17 particularly in order to meet the contentions of the
18 prosecution and the implication drawn from prosecu-
19 tion's exhibits 49 and 51, we shall introduce various
20 treaties signed between the allied powers subsequent
21 to the outbreak of World War II for the purpose of
22 showing analogous if not identical acts undertaken
23 by them.

24 We now offer in evidence defense document
25 150, being the treaty of mutual assistance between

1 France, the United Kingdom and Turkey, dated
2 October 19, 1939.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: May it please the Tribunal,
5 I did not object to the last document because I
6 understood that the Tribunal did not wish me to object
7 to these documents merely on the ground of irrelevance.
8 This one is subject to exactly the comment which
9 your Honor made on the last one. The prosecution
10 has never suggested that the making of a no separate
11 peace pact is in itself unlawful. Our point with
12 regard to the no separate peace pact between Germany,
13 Japan and Italy in 1941 is that it was negotiated
14 secretly for some weeks before it was signed at the
15 same time that Japan was pretending to be carrying on
16 negotiations for a peaceful settlement with the United
17 States. This document is wholly irrelevant in itself
18 and the no separate peace clause in it is irrelevant,
19 in my submission, for the reasons stated.

20 THE PRESIDENT: This document and the last
21 document are entirely different from those that we
22 have admitted with some doubt as to their relevancy.

23 MR. YAMAOKA: With regard to this point, if
24 the Tribunal please, I should desire to add that this
25 forms the foundation for later evidence to follow to

1 counteract the charge of conspiracy by the accused.
2 The objection is upheld.

3 MR. YAMAOKA: In the light of the Tribunal's
4 ruling on the previous document, I should like at
5 this time to make an offer of proof that the following
6 documents which I had intended to introduce--

7 THE PRESIDENT: Do you concede that the
8 decision covers these documents you are about to
9 mention?

10 MR. YAMAOKA: A few of the following documents,
11 your Honor, but I should like the record to show the
12 offer of proof made by the defense.

13 THE PRESIDENT: We cannot say whether our
14 decision covers documents we have never seen or know
15 nothing about.

16 MR. YAMAOKA: Then, if the Tribunal please,
17 may I respectfully request that the last document be
18 marked for identification, being defense document 150.

19 THE PRESIDENT: The document has been wholly
20 rejected.

21 MR. YAMAOKA: I trust that I made myself
22 clear, your Honor, that I should like to have it merely
23 marked for identification in order to show our offer
24 of proof only.

25 THE PRESIDENT: Documents have been marked

1 here for identification for a special reason. They
2 are parent documents from which excerpts have been
3 taken and we want the control of the parent document.
4 That is why they were marked.

5 MR. YAMAOKA: According to practice to
6 which I am accustomed, if the Tribunal please, in
7 instances where documents are rejected we still have
8 the privilege of offering them for identification
9 and having it--

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THE PRESIDENT: There is no need for it,
1 Mr. Yamaoka, there is no need for it really. There
2 is a full record kept of all you have said and all
3 we have done; and the document is clearly enough
4 identified. It is a treaty of which judicial notice
5 would have to be taken practically. We will do
6 nothing here without a good reason.

2
THE PRESIDENT: Yes, your Honor. In accordance
8 with the Tribunal's ruling I should like to have
9 the record show that the defense offers for identification
10 only -- I believe this is in accordance
11 with what your Honor's ruling has been --

13 THE PRESIDENT: The Tribunal's.

14 MR. YAMAKA: -- defense document 151, being
15 the agreement of mutual assistance between the
16 United Kingdom and Poland signed at London, August 25,
17 1939. In accordance with the desires of my associates,
18 Mr. President, I should like to amend the statement
19 I just made, and I should like to tender this document
20 in evidence.

21 MR. CANN: We object for the same reasons
22 as the last time.

23 THE PRESIDENT: You rely on the same grounds
24 for its submission, I suppose?

25 (Whereupon, Mr. Yamaoka nodded head.)

1 THE PRESIDENT: Objection upheld.

2 MR. YAMAKA: We next offer in evidence
3 defense document 184, being the Joint Declaration
4 by the United States of America, the United Kingdom
5 of Great Britain and Northern Ireland, the Union of
6 Soviet Socialist Republics, China, Australia,
7 Belgium, Canada, Costa Rica, Cuba, Czechoslovakia,
8 Dominican Republic, El Salvador, Greece, Guatemala,
9 Haiti, Honduras, India, Luxemburg, The Netherlands,
10 New Zealand, Nicaragua, Norway, Panama, Poland, South
11 Africa and Yugoslavia.

12 THE PRESIDENT: Any objection?

13 MR. CARR: Same objection, your Honor.

14 THE PRESIDENT: Objection upheld.

15 MR. YAMAKA: May I request that the record
16 show the date of this document signed at Washington,
17 January 1, 1942, and that the reasons in support of
18 the offer of this document is similar to that which
19 was given in support of defense document 150.

20 For similar purposes we next offer defense
21 document No. 185, being the Treaty of Union in the
22 War Against Hitlerite Germany and Her Associates in
23 Europe and of Collaboration and Mutual Assistance
24 Thereafter Between the U. S. S. R. and The United
25 Kingdom of Great Britain and Northern Ireland, signed

1 at London, May 26, 1942, in force from July 4, 1942.

2 MR. CARR: Same objection, your Honor.

3 THE PRESIDENT: Objection upheld.

4 MR. YAMACKA: For similar purposes we next
5 introduce in evidence defense document 186, being
6 the Agreement for Joint Action by the Government of
7 the Union of Soviet Socialist Republics and His
8 Majesty's Government in the United Kingdom in the
9 War Against Germany, signed at Moscow, July 12, 1941,
10 in force from July 12, 1941.

11 MR. CARR: The same objection, your Honor.

12 THE PRESIDENT: Objection upheld.

13 MR. YAMACKA: For the same purpose we next
14 offer in evidence defense document 187, being the
15 Protocol to the Agreement for Joint Action, to the
16 previous document.

17 MR. CARR: The same objection, your Honor.

18 THE PRESIDENT: Objection upheld.

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1 MR. YAMAOKA: We next offer in evidence
2 defense document No. 159, being the Joint Anglo-
3 American Declaration of August 1941.

4 THE PRESIDENT: No objection apparently.

5 MR. COMYNS CARE: No, your Honor, we have
6 no objection to this.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document No.
9 159 will receive exhibit No. 2322.

10 (Whereupon the document above referred
11 to was marked defense ~~exhibit~~ No. 2322 and
12 received in evidence.)

13 MR. YAMAOKA. With the Tribunal's permission
14 I shall read defense exhibit 2322.

16 "ANGLO-AMERICAN JOINT DECLARATION.

17 "Signed somewhere on the Atlantic, on a
18 certain day of August, 1941. Announced on August
19 14, 1941.

20 "The President of the United States of
21 America and the Prime Minister, Mr. Churchill,
22 representing His Majesty's Government in the
23 United Kingdom, being met together, deem it right
24 to make known certain common principles in the
25

1 national policies of their respective countries on
2 which they base their hopes for a better future
3 for the world.

4 "1. Their countries seek no aggrandizement,
5 territorial or other.

6 "2. They desire to see no territorial
7 changes that do not accord with the freely ex-
8 pressed wishes of the peoples concerned.

9 "3. They respect the rights of all peoples
10 to choose the form of government under which they
11 will live; and they wish to see sovereign rights
12 and self-government restored to those who have been
13 forcibly deprived of them.

14 "4. They will endeavor, with due respect
15 for their existing obligations, to further the en-
16 joyment by all states, great or small, victor or
17 vanquished, of access on equal terms to the trade
18 and raw materials of the world which are needed for
19 their economic prosperity.

20 "5. They desire to bring about the fullest
21 collaboration between all nations in the economic
22 field with the object of securing for all improved
23 labour standards, economic advancement and social
24

1 security.

2 "6. After the final destruction of the
3 Nazi tyranny, they hope to see established a peace
4 which will afford to all nations the means of dwell-
5 ing in safety within their own boundaries and which
6 will afford assurance that all men in all lands may
7 live out their lives in freedom from fear and want.
8

9 "7. Such peace should enable all men to
10 traverse the high seas and oceans without hindrance.
11

12 "8. They believe that all nations of the
13 world, for realistic as well as spiritual reasons,
14 must come to the abandonment of the use of force.
15 Since no future peace can be maintained if land, sea
16 or air armaments continue to be employed by nations
17 which threaten or may threaten aggression outside
18 their frontiers, they believe, pending the establish-
19 ment of a wider and permanent system of general
20 security, that the disarmament of such nations is
21 essential. They will likewise aid and encourage
22 all other practicable measures which will lighten
23 for peace-loving peoples the crushing burden of
armaments.
24

25 "Signed: Franklin D. Roosevelt.
26 "Signed: Winston Churchill."

1 THE PRESIDENT: Have you finished with the
2 pacts, the No-Separate Peace Pacts?

3 MR. YAMACKA: The Tribunal will recall --
4 Yes, your Honor. I am sorry.

5 THE PRESIDENT: Some of the Members of the
6 Court think it may be necessary to remind you that
7 the Court does not take the view that these No-
8 Separate Peace Pacts are in themselves criminal. To
9 render them criminal you require a criminal motive
10 or purpose, or something like that.

11 MR. YAMACKA: That has been our view, Mr.
12 President, and we thank the Tribunal for its obser-
13 vation.

14 The Tribunal will recall that prosecution
15 exhibits 68 to 90 listed on the defense revised list,
16 dated 23 February 1947, bearing serial numbers 55
17 to 83, were deferred for the consideration of the
18 Tribunal until a more appropriate opportunity.
19 We should now desire to have that opportunity, and
20 Doctor Seichi ONO, Japanese counsel for the accused
21 OKA, will continue for the defense.

22 THE PRESIDENT: We will recess now for
23 fifteen minutes.

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(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

W 1 MARSHAL OF THE COURT: The International
o 2 Military Tribunal for the Far East is now resumed.

f 3 THE PRESIDENT: Dr. ONO.

B 4 MR. ONO: We now read exhibit No. 68 which
a 5 was presented by the prosecution, which is the Japanese
r 6 Constitution, to show the constitutional set-up of Japan
t 7 as well as the guarantee of individual liberty by the
o 8 constitutional law. Concerning the governmental organ-
n 9 ization of Japan further evidence will be presented
10 later on.

11 "Article I: The Empire of Japan shall be
12 reigned over and governed by a line of Emperors un-
13 broken for ages eternal.

14 "Article II: The Imperial Throne shall be suc-
15 ceded to by Imperial male descendants, according to the
16 provisions of the Imperial House Law.

17 "Article III: The Emperor is sacred and
18 inviolable.

19 "Article IV: The Emperor is the head of the
20 Empire, combining in Himself the rights of sovereignty,
21 and exercises them, according to the provisions of the
22 present Constitution.

23 Article V: The Emperor exercises the legisla-
24 tive power with the consent of the Imperial Diet.

25 "Article VI: The Emperor gives sanction to

1 laws and orders them to be promulgated and executed.

2 "Article VII: The Emperor convokes the Im-
3 perial Diet, opens and closes and prorogues it and dis-
4 solves the House of Representatives.

5 "Article VIII: The Emperor, on consequence
6 of an urgent necessity to maintain public safety or to
7 avert public calamities, issues, when the Imperial Diet
8 is not sitting, Imperial Ordinances in the place of law.

9 "Such Imperial Ordinances are to be laid be-
10 fore the Imperial Diet at its next session, and when
11 the Diet does not approve the said Ordinances, the
12 Government shall declare them to be invalid for the
13 future.

14 "Article IX: The Emperor issues or causes to
15 be issued, the Ordinances necessary for the carrying
16 out of the laws, or for the maintenance of the public
17 peace and order, and for the promotion of the welfare
18 of the subjects. But no Ordinance shall in any way
19 alter any of the existing laws.

20 "Article X: The Emperor determines the organ-
21 ization of the different branches of the administration,
22 and salaries of all civil and military officers, and
23 appoints and dismisses the same. Exceptions especially
24 provided for in the present Constitution or in other
25 laws, shall be in accordance with the respective pro-

1 visions (bearing thereon).

2 "Article XI: The Emperor has the supreme com-
3 mand of the Army and Navy.

4 "Article XII: The Emperor determines the or-
5 ganization and peace standing of the Army and Navy.

6 "Article XIII: The Emperor declares war, makes
7 peace, and concludes treaties.

8 "Article XIV: The Emperor declares a state
9 of seige.

10 "The conditions and effects of a state of
11 seige shall be determined by law.

12 "Article XV: The Emperor confers titles of
13 nobility, rank, orders and other marks of honour.

14 "Article XVI: The Emperor orders amnesty,
15 pardon, commutation of punishments and rehabilitation.

16 "Article XVII: A Regency shall be instituted
17 in conformity with the provisions of the Imperial
18 House Law.

19 "Article XIX: The Japanese subjects may, ac-
20 cording to qualifications determined in laws or ordi-
21 nances, be appointed to civil or military or any other
22 public offices equally."

23 THE PRESIDENT: Why are you reading all this?

24 MR. ONO: I shall not read the entire Constitu-
25 tion. I shall only read such articles as I believe

relevant to this case.

1 THE PRESIDENT: The relevancy of many of them
2 you have read, Dr. ONO, is not apparent to me at all
3 events.
4

5 MR. ONO: The defendants in the dock all held
6 important positions with the Japanese Government pre-
7 viously and they are being charged for crimes by virtue
8 of these official positions which they held at one time.
9 Therefore, I believe that many articles in the former
10 Constitution which established the fundamental organ-
11 ization of the Japanese Government will be of value in
12 determining the responsibility of the accused.

13 THE PRESIDENT: They are being charged for what
14 they said or did or failed to do or to say.

15 MR. ONO: The articles which I intend to quote
16 further are the articles which deal with the guarantee
17 of personal liberties, and I believe these articles will
18 have some bearing on the question of restrictions placed
19 on such liberties in war time. I am not intending to
20 read all of the articles. I shall skip around here and
21 there.

22 "Article XXII: The Japanese subjects shall
23 have the liberty of abode and of changing the same within
24 the limits of law.
25

"Article XXIII: No Japanese subject shall be

1 arrested, detained, tried or punished, unless according
2 to law.

3 "Article XXIV: No Japanese subject shall be
4 deprived of his right of being tried by the judges de-
5 termined by law.

6 "Article XXV: Except in the cases provided
7 for in the law, the house of no Japanese subject shall
8 be entered or searched without his consent.

9 "Article XXVI: Except in the cases mentioned
10 in the law, the secrecy of the letters of every Japanese
11 subject shall remain inviolate.

12 "Article XXVII: The right of property of
13 every Japanese subject shall remain inviolate.

14 "Measures necessary to be taken for the public
15 benefit shall be provided for by law.

16 "Article XXVIII: Japanese subjects shall,
17 within limits not prejudicial to peace and order, and
18 not antagonistic to their duties as subjects, enjoy
19 freedom of religious belief.

20 "Article XXIX: Japanese subjects shall,
21 within the limits of law, enjoy the liberty of speech,
22 writing, publication, public meetings and associations."

23 THE PRESIDENT: I don't know why we should give
24 you the liberty of referring to a lot of irrelevant
25 matters when we deny it to others. Most of the things

1 you have read in this Constitution are irrelevant. I
2 invite you to exercise a little better judgment, Dr. ONO.

3 MR. ONO: May I not read a few articles pertaining-
4 ing to the Imperial Diet in order to assist the Tribunal
5 in gaining a better understanding as to the political
6 structure of the Japanese Government?

7 THE PRESIDENT: We will listen to anything
8 that is relevant or is likely to prove so, but such
9 things as religious liberties of the Japanese is wholly
10 irrelevant.

11 MR. ONO: Your Honor, the prosecution has
12 charged that the Japanese Government in war time inter-
13 fered with the religious liberties of the Japanese
14 people.

15 May I read four articles more?

16 THE PRESIDENT: Read them.

17 MR. ONO: (Reading).

18 "Article XXXVII: Every law requires the con-
19 sent of the Imperial Diet.

20 "Article LV: The respective Ministers of
21 State shall give their advice to the Emperor, and be
22 responsible for it.

23 "All laws, Imperial Ordinances and Imperial
24 Rescripts of whatever kind, that relate to the affairs
25 of the State, require the counter-signature of a Min-

1 ister of State.

2 "Article LVI: The Privy Councillors shall,
3 in accordance with the provisions for the organization
4 of the privy council, deliberate upon important matters
5 of State, when they have been consulted by the Emperor.

6 "Article LXX: When the Imperial Diet cannot
7 be convoked, owing to the external or internal condition
8 of the country, in case of urgent need for the
9 maintenance of public safety, the Government may take
10 all necessary financial measures, by means of an Imperial
11 Ordinance.

12 "In the case mentioned in the preceding
13 clause, the matter shall be submitted to the Imperial
14 Diet at its next session, and its approbation shall
15 be obtained thereto."

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1 We now read exhibit No. 69 presented by the
2 prosecution which is the Imperial House Law to show the
3 provisions on the succession of the Imperial Throne,
4 and other matters of the Imperial House.

5 "Article I. - The Imperial Throne of Japan
6 shall be succeeded to by male descendants in the male
7 line of Imperial Ancestors." --

8 THE PRESIDENT: Please do not read any more
9 of that. It is not necessary.

10 MR. ONO: We now read exhibit No. 70 presented
11 by the prosecution which is the Imperial Ordinance
12 on the Organization of the Cabinet. This is to show the
13 set-up of the Cabinet and duties and competence of
14 Premier and other State Ministers. This ordinance is
15 relevant to the Article 55 of the Japanese Constitution
16 which I have just read.

17 "Imperial Ordinance on the Organization
18 of the Cabinet

19 "Article I. The Cabinet is composed of various
20 Ministers of State.

21 "Article II. The Prime Minister stands at the
22 head of the Ministers of State, reports affairs of
23 State to the Sovereign, and in compliance with Imperial
24 instructions, maintains the co-ordination of the various
25 branches of the Administration.

1 "Article III. The Prime Minister, should an
2 occasion seem sufficiently important to demand such a
3 course, has competence to suspend dispositions made
4 or orders issued by the Administration, pending Imperial
5 sanction.

6 "Article IV. The Prime Minister can issue
7 Cabinet Ordinances on the authority of his own or
8 specially delegated upon him.

9 "Article IV-2. The Prime Minister directs
10 and supervises the Superintendent General of Metropol-
11 itan Police, Governor of Hokkaido and Prefectural
12 Governors in respect of the affairs in his charge.
13 When their orders or dispositions are contrary to
14 provisions enacted, harmful to the public interest or
15 regarded as violating their competence, he can suspend
16 or repeal such orders or dispositions.

17 "Article V. The following matters shall be
18 submitted for deliberation by the Cabinet Council:-

19 "1. Drafts of laws, financial estimates, and
20 settled accounts.

21 "2. Treaties with foreign countries and all
22 international questions of importance.

23 "3. Imperial Ordinances relating to the
24 organization of Government offices and the enforcement
25 of regulations and laws.

1 "4. Disputes between Ministries on their
2 respective competence.

3 "5. Petitions from the people, handed down
4 from the Emperor or submitted by the Imperial Diet.

5 "6. Expenditure outside of the budget.

6 "7. Appointment of chokunin officials and of
7 local Governors, as well as their promotions and
8 removals.

9 "In addition to the above, any important matters
10 connected with the affairs in charge of various Ministries
11 and having relation to the higher administration, shall
12 also be submitted for deliberation by the Cabinet
13 Council.

14 "Article VI. The Minister in charge can demand,
15 according to his own opinion, the consideration of the
16 Cabinet Council upon any matter whatsoever through the
17 Prime Minister.

18 "Article VII. Such matters as concern military
19 secrets and military orders and are reported to the
20 Emperor, unless referred to the Cabinet by the Emperor,
21 shall be reported to the Prime Minister by the Minister
22 of War and the Minister of the Navy.

23 * * *

24 "Article IX. Should any Minister of State be
25 prevented from discharging his functions, another

1 Minister of State shall concurrently hold his office
2 temporarily or ordered to take charge of his affairs.

3 "Article X. In addition to the Ministers of
4 various Ministries, a person or persons may be caused
5 by Imperial command to sit in the Cabinet as a Minister
6 or Ministers of State."

7 We now read exhibit No. 71 presented by the
8 prosecution which is the Organization of the Board
9 of Planning to show the duties and competence of the
10 Board of Planning.

11 "Article 1

12 "The Board of Planning shall be under the
13 jurisdiction of the Prime Minister and take charge
14 of the following affairs:

15 "1. Drafting of plans concerning the expansion
16 and employment of the total national resources in times
17 of peace and war and reporting of such plans, together
18 with reasons therefor, to the Prime Minister.

19 "2. Investigation of the gists of proposals
20 which are submitted by the Ministers to the Cabinet
21 Council and which have an important bearing upon the
22 expansion and employment of the total national resources
23 in times of peace and war and reporting, together with
24 its opinion, to the Cabinet through the Prime Minister.

25 "3. Reporting, together with its opinion, to

1 the Cabinet through the Prime Minister with reference
2 to the control of budget for important matters related
3 to the expansion and employment of the total national
4 resources in times of peace and war."

5 * * *

6 "5. Matters concerning the making of a plan
7 for the utilization of the territory and matters concern-
8 ing the control of affairs of various Government offices
9 as needed by the plan for the utilization of the
10 territory.

11 "The Board of Planning may, if necessary
12 for the execution of the affairs specified in the
13 preceding Paragraph, request the other Government offices
14 concerned to furnish it with reference material or
15 explanations."

16 * * *

17 "Article 6

18 "The President shall superintend the affairs
19 of the Board, direct and supervise the personnel under
20 him and decide independently upon the appointment,
21 promotion, demotion and dismissal of officials of
22 'Hannin' rank."

23 We now read exhibit No. 72 presented by the
24 prosecution which is the Organization of the Board
25 of Information to show the duties and competence of

1 the Board of Information.

2 "Article 1

3 "The Board of Information shall be under the
4 jurisdiction of the Prime Minister and take charge of
5 affairs concerning the following matters:

6 "1. Collection of information, reporting,
7 enlightenment and publicity concerning matters which
8 are the fundamentals of the prosecution of national
9 policies.

10 "2. Dispositions in respect of newspapers and
11 other publications as provided for in Article 20 of
12 the National Mobilization Law.

13 "3. Guidance and control in respect of
14 broadcasting by telephone.

15 "4. Such guidance and control of motion-
16 pictures, phonograph records, plays and shows as are
17 necessary for the enlightenment and publicity concern-
18 ing matters which are fundamentals of the prosecution
19 of national policies.

20 "The Board of Information may, if necessary for
21 the execution of the affairs mentioned in the preceding
22 Paragraph, request the Government offices concerned
23 to extend their cooperation in connection with the coll-
24 ection of information, reporting, enlightenment and
25 publicity."

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2 "Article 6

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"The President shall superintend the affairs
of the Board, direct and supervise the personnel under
him and decide independently upon the appointment,
promotion, demotion and dismissal of Clerks (Zoku)."

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1 We now read exhibit No. 73 presented by the
2 prosecution, which is the Imperial Ordinance relating
3 to General Rules concerning the organization of the
4 Ministries. This is to show the duties and compe-
5 tence of Ministers, Vice-Ministers, Chiefs of
6 Bureaus, etc., common to all ministries of the
7 Japanese Government. (Reading)

8 "Article 1.

9 "The present rules shall be applicable to
10 the Ministries of Foreign Affairs, of Home Affairs,
11 of Finance, of War, of the Navy, of Justice, of Edu-
12 cation, of Agriculture and Forestry, of Commerce and
13 Industry, of Communications, of the Railways, of
14 Overseas Affairs, and of Welfare.

15 "Article 2.

16 "Each Minister shall be responsible for the
17 affairs of which the principal competency belongs to
18 him.

19 ""When there are affairs of which it is not
20 clear where the principal competency belongs and
21 which concern two Ministries or over, it shall be
22 decided where the principal competency belongs by
23 submitting the said affairs to the Cabinet Council.

24 "Article 3.

25 "Each Minister shall, when it is necessary

1 to enact, repeal or amend a law or an Imperial
2 Ordinance in regard to the affairs of which the
3 principal competency belongs to him, submit the said
4 affairs to the Cabinet Council, together with a draft
5 for such enactment, repeal or amendment.

6 "Article 4.

7 "Each Minister may, by virtue of his official
8 authority or by virtue of a special authorization,
9 issue a Ministerial Ordinance in regard to the af-
10 fairs of which the principal competency belongs to
11 him.

12 "Article 5.

13 "Each Minister may, in regard to the affairs
14 of which the principal competency belongs to him,
15 issue directions of instructions to the Superintend-
16 ent-General of Metropolitan Police, the Governor-
17 General of Hokkaido and the Prefectural Governors.

18 "Article 12.

19 "There shall be instituted Bureaus in each
20 Ministry to take charge of the Ministry's affairs
21 assigned to them respectively. The affairs to be so
22 assigned shall be defined by the Imperial Ordinance
23 relating to the Organization of the Ministry con-
24 cerned.

1 "Article 14.

2 "There shall be instituted in each Ministry
3 the following personnel:

4 "Parliamentary Vice-Minister

5 "Vice-Minister

6 "Parliamentary Counselor.

7 "Directors of Bureaus.

8 "Private Secretary.

9 "Secretaries.

10 "Clerks.

11 "Article 15.

12 "There shall be one Vice-Minister in each
13 Ministry, and he shall be of 'Chokunin' rank.

14 "Article 16.

15 "The Vice-Minister shall assist the Minister,
16 co-ordinate the affairs of the Ministry, and supervise
17 the affairs of the Bureaus and Divisions.

18 "Article 18.

19 "There shall be one Director in each Bureau,
20 and he shall be of 'Chokunin' rank. He shall, under
21 the instructions of the Minister, take charge of the
22 affairs of which the principal competency belongs to
23 him, and direct and supervise the affairs of the Sec-
24 tions of his Bureau."

25 We now read exhibit No. 74, presented by the

1 prosecution, which is the Organization of War Ministry
2 to show the duties and competence of the Minister
3 of War, Vice-Minister of War and Chiefs of Bureaus
4 of the War Ministry. (Reading)

5 "Article I.

6 "The War Minister supervises the military
7 administration of the Army, leads and controls officers
8 and civilians in the military service, and
9 superintends various departments under his charge.

10 "Article III.

11 "A ministerial Aide-de-Camp is posted in
12 the War Ministry.

13 "The Ministerial Aide-de-Camp administers
14 the affairs of the minister's Secretariate upon the
15 order of the minister.

16 "Article V.

17 "The following affairs are administered in
18 the minister's Secretariate:

19 "1. matters requiring secrecy.

20 "2. matters connected with the taking
21 charge of the official seals of the minister and of
22 the ministry.

23 "3. matters concerned with taking charge
24 of the original books of military orders.

25 "4. matters concerning the compilation and

1 translation of records.

2 "5. matters connected with the inspection,
3 reception, despatch, compilation and keeping of the
4 official documents and documents of concrete plan.

5 "6. matters connected with keeping books
6 in Charge.

7 "7. matters concerning management of the
8 military library.

9 "8. matters connected with the colours and
10 the Yasukuni' Shrine.

11 "9. matters concerning reports and statis-
12 tics.

13 "10. matters concerning personnel affairs
14 of the junior officials of the ministry.

15 "11. matters concerning the reception of
16 foreign military officers.

17 "12. matters concerning discipline in the
18 ministry.

19 "13. matters concerning printing.

20 "14. matters not to be managed according to
21 the established regulations and not concerned with
22 any bureau.

23 "Article VI.

24 "The War Ministry had the following seven
25 Bureaus:

1 "Personnel Affairs Bureau.

2 "Military Affairs Bureau.

3 "Military Service Bureau.

4 "Equipment Bureau.

5 "Intendance Bureau.

6 "Medical Bureau.

7 "Judicial Affairs Bureau.

8 "Article X.

9 "The following business is transacted in
10 the Military Administration Section:

11 "1. Matters concerning the fundamental
12 principles of national defense.

13 "2. Matters concerning the armament of the
14 Army and other general military administration of
15 the army.

16 "3. Matters concerning the establishment,
17 peacetime organization and equipment of the Army.

18 "4. Matters concerning the principles of
19 guarding against danger, defense, air defense, mobi-
20 lization of the army and of man-power.

21 "5. Matters concerning the general control
22 of the military estimates.

23 "6. Matters concerning fundamental munition-
24 al administration.

25 "7. Matters concerning the control of the

1 duties of the air service and others connected with
2 aviation.

3 "8. Matters concerning maneoures and in-
4 spection.

5 "9. Matters concerning allotment of units
6 and corps.

7 "10. Matters concerning various regulations
8 at wartime.

9 "11. Matters concerning resident-officers
10 in foreign countries, officers studying abroad, and
11 students of the Whole-nation Combat Research Insti-
12 tute.

13 "12. Matters concerning Army Munition Re-
14 search Committee.

15 "Article XII.

16 "The following business affairs are managed
17 in Military Affairs Section:

18 "1. Matters concerning general affairs of
19 national defense policy.

20 "2. Matters concerning international regu-
21 lations.

22 "3. Matters concerning foreign officers
23 attached to army units.

24 "4. Matters concerning general affairs of
25 national demobilization.

1 "5. Matters concerning army affairs of
2 Manchuria and China and other concerned with them.

3 "6. Matters concerning army affairs of
4 foreign countries except Manchuria and China.

5 "7. Matters concerning connection affairs
6 with Imperial Diet.

7 "8. Matters concerning popularization of
8 national defense spirit and counterplan for nations'
9 thoughts.

10 "9. Matters concerning controlling of di-
11 rection of parties researching for military affairs,

12 "Article XIII.

13 "Military Service Bureau consists of Mili-
14 tary Service Section, Complement Section, Defense
15 Section, Horse Administration Section, and Veterinary
16 Affairs Section.

17 "Article XIV.

18 "The following business affairs are managed
19 in Military Service Section:

20 "1. Matters concerning the respective
21 private's mission (except military police and avia-
22 tion privates.)

23 "2. Matters concerning duty and instruction
24 of Military Musical Division.

25 "3. Matters concerning military discipline,

1 morale and disciplinary laws.

2 "4. Matters concerning manuals for train-
3 ing (except those regarding aviation privates).

4 "5. Matters concerning interior duty.

5 "6. Matters concerning ceremonies, formal-
6 ies, and insignias.

7 "7. Matters concerning parade grounds,
8 ranges, bridging sites, practice grounds and other
9 army facilities (except those under control of
10 Defense Section and regarding aviation affairs).

11 "8. Matters concerning military drilling
12 in civil schools and that of young generation.

13 "Article XV.

14 "The following business affairs are managed
15 in Complement Section:

16 "1. Matters concerning military service.

17 "2. Matters concerning replacement of
18 officers and men.

19 "3. Matters concerning army demobilization.

20 "4. Matters concerning levy.

21 "5. Matters concerning personnel demobili-
22 zation.

23 "6. Matters concerning requisitions.

24 "7. Matters concerning Reservist Associa-
25 tion.

1 "Article XVI.

2 "The following business affairs are
3 managed in Defense Section:

4 "1. Matters concerning N.P.'s mission.

5 "2. Matters concerning military police
6 (except that in charge of Judicial Bureau) and pro-
7 tection of military secret.

8 "3. Matters concerning spy protection.

9 "4. Matters concerning air defense.

10 "5. Matters concerning guarding and safety
11 precautions.

12 "6. Matters concerning garrison duty.

13 "7. Matters concerning construction and
14 complement of fortifications and lands used for
15 national defense.

16 "8. Matters concerning laws applied to
17 fortified zone, military management laws applied to
18 army transport port areas, and etc.

19 "9. Matters concerning domain-and-city
20 planning.

22 "Article XXIV.

23 "Intendance Bureau consists of Accounting
24 Section, Audit Section, Clothing and Provisions Sec-
25 tion and Building Section.

"Article XXV.

1 "Article XVI.

2 "The following business affairs are
3 managed in Defense Section:

4 "1. Matters concerning M.P.'s mission.

5 "2. Matters concerning military police
6 (except that in charge of Judicial Bureau) and pro-
7 tection of military secret.

8 "3. Matters concerning spy protection.

9 "4. Matters concerning air defense.

10 "5. Matters concerning guarding and safety
11 precautions.

12 "6. Matters concerning garrison duty.

13 "7. Matters concerning construction and
14 complement of fortifications and lands used for
15 national defense.

16 "8. Matters concerning laws applied to
17 fortified zone, military management laws applied to
18 army transport port areas, and etc.

19 "9. Matters concerning domain-and-city
20 planning.

22 "Article XXIV.

23 "Intendance Bureau consists of Accounting
24 Section, Audit Section, Clothing and Provisions Sec-
25 tion and Building Section.

"Article XXV.

1 "Accounting Section transacts the following
2 businesses:

3 "1. Matters concerning duty and education
4 in Intendance Division.

5 "2. Matters concerning estimate and settle-
6 ment.

7 "3. Matters concerning research and consid-
8 eration of the using of military funds.

9 "4. Matters concerning the estimate of
10 demobilization.

11 "5. Matters concerning the expenditure of
12 reserve funds, the carrying forward of fixed amount,
13 expenditure of passed fiscal years drawbacks of the
14 fixed amount and the expenditure before the opening
15 of the fiscal year.

16 "6. Matters concerning the wartime regula-
17 tions in Intendance Division.

18 "7. Matters concerning salaries, wages
19 and other minor pays and travelling expenses.

20 "8. Matters concerning the pecuniary intend-
21 ance and accounting officials.

22 "9. Matters concerning various allowances
23 and purchases in this department.

24 "Article XXVIII.

25 "Building Section transacts the following

1 businesses:

2 "1. Matters concerning military land and
3 various buildings (excluding the ones under the con-
4 trol of Defense Section, Army Ordnance Head Office
5 and Air Service Head Office).

6 "2. Matters concerning military land
7 and the controlling of standard of various building.

8 "3. Matters concerning state-owned proper-
9 ties.

10 "4. Matters concerning investigation, re-
11 search and inspection of buildings.

12 "5. Matters concerning completion, supply
13 and inspection of munitions -- field service goods,
14 canteen goods, building material and the other
15 goods, (excluding ones under the control of other
16 Sections).

17 "6. Matters concerning investigation, re-
18 search, and inspection of munitions, (excluding ones
19 under the control of other sections.)

20 "7. Matters concerning manufacturing and
21 storing equipment of munitions.

22 "8. Matters concerning guidance, assistance
23 and inspection of the manufacturing of munitions.

24 "9. Matters concerning stores accounts and
25 stores accountants.

1 "Article XXIX.

2 "Medical Affairs Bureau consists of Sanitary
3 Section and Medical Service Section.

4 "Article XXX.

5 "Sanitary Section transacts the following
6 businesses:

7 "1. Matters concerning duty and education
8 of Sanitary Division.

9 "2. Matters concerning sanitation, unit
10 sanitation and labour sanitation.

11 "3. Matters concerning the sanitation of
12 clothing and provisions, buildings, water supply
13 and drainage.

14 "4. Matters concerning the prevention of
15 epidemics.

16 "5. Matters concerning investigation, re-
17 search and statistics of military sanitation.

18 "6. Matters concerning various wartime
19 regulations of Sanitary Division.

20 "Article XXXI.

21 "Medical Service Section transacts the follow-
22 ings businesses:

23 "1. Matters concerning medical treatment
24 and medical care.

25 "2. Matters concerning hospitals, dispensary

and sanatorium.

"3. Matters concerning completion, supply
and inspection of medical stores.

"4. Matters concerning investigation, re-
search and inspection of medical stores.

"5. Matters concerning production and
storage equipment of medical stores, (excluding es-
tablishment and management).

"6. Matters concerning guidance, assist-
ance and inspection of medical stores industry,
(excluding the ones under the control of Audit
Section.)

"7. Matters concerning physical examina-
tion.

"8. Matters concerning pension diagnosis
and discharge from service by disease and wound.

"9. Matters concerning Japanese Red Cross
Society and relief service organizations of the sick
and wounded.

"Article XXXII.

"Judicial Affairs Bureau transacts the
following businesses:

"1. Matters concerning duty and education
of Judicial Division.

"2. Matters concerning the administration

of justice of the military affairs.

1 "3. Matters concerning a prison.

2 "4. Matters concerning amnesty, provisional
3 release, and the executions of criminals.

4 "5. Matters concerning w-rtime various
5 regulations of the Judicial Department."

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2 We now read Exhibit No. 75 presented by the
3 prosecution which is the Imperial Ordinance relating
4 to the organization of the Minstry of Navy to show
5 the duties and competence of the Minister of the Navy,
6 the Vice-Minister of the Navy and the Chiefs of bureaus
7 of the Navy Ministry:

8 "Article 1. The Minister of the Navy shall
9 control naval administration, shall superintend Naval
10 Servicemen and Naval Civilians, and shall supervise
11 the agencies under his jurisdiction.

12 "Article 3. There shall be instituted
13 Adjutants in the Minstry of the Navy. They shall,
14 under the instructions of the Minister of the Navy,
15 take charge of the affairs of the Secretariat of the
16 said Minister.

17 "Article 6. There shall be instituted in the
18 Ministry of the Navy the following eight Bureaus:
19 Naval Affairs Bureau, Armaments Bureau, Personnel
20 Bureau, Educational Bureau, Munitions Bureau, Medical
21 Affairs Bureau, Accounting Bureau, Judicial Affairs
22 Bureau.

23 "Article 7. There shall be instituted in
24 the Ministry of the Navy the First Section, the
25 Second Section, the Third Section and the Fourth

1 Section.

2 "Article 8. The First Section of the Naval
3 Affairs Bureau shall take charge of the following
4 affairs:

5 "1. Matters concerning naval armaments and
6 other matters concerning naval administration in general.

7 "2. Matters concerning the construction or
8 organization of, and service aboard or at, warships,
9 units, offices and schools.

10 "3. Matters concerning the organization and
11 service of warships and units.

12 "4. Matters concerning naval discipline
13 and morale.

14 "5. Matters concerning naval maneuvers.

15 "6. Matters concerning naval reviews.

16 "7. Matters concerning ceremonies, etiquette,
17 uniforms and flags.

18 "8. Matters concerning warships and weapons
19 of war and other munitions in general.

20 "9. Matters concerning guarding and defense.

21 "Article 9. The Second Section of the Naval
22 Affairs Bureau shall take charge of the following
23 matters:

24 "1. Matters concerning national defense
25 policy.

1 "2. Matters concerning international conventions and personnel dispatched abroad.

2 "Article 9 (Second) The Third Section of
3 the Naval Affairs Bureau shall take charge of the
4 following matters:

5 "1. Matters concerning the use of engines.

6 "2. Matters concerning constructions aboard
7 warships.

8 "3. Matters concerning the maintenance and
9 preservation of warships.

10 "Article 9 (Third) The Fourth Section of the
11 Naval Affairs Bureau shall take charge of the follow-
12 ing matters:

13 "1. Matters concerning the dissemination of
14 consciousness relating to national defense.

15 "2. Matters concerning the guidance of
16 organizations connected with naval affairs.

17 "Article 9 (Fourth) There shall be instituted
18 in the Armaments Bureau the First Section, the Second
19 Section and the Third Section.

20 "Article 9 (Fifth) The First Section of the
21 Armaments Bureau shall take charge of the following
22 matters:

23 "1. Matters concerning preparations for the
24 mobilization of naval forces.

1 "2. Matters concerning National General
2 Mobilization in general.

3 "3. Matters concerning the preservation of
4 weapons of war and other munitions.

5 "4. Matters concerning requisition.

6 "5. Matters concerning equipments on land
7 and sea."

8 THE PRESIDENT: Dr. ONO, some of these matters
9 are material, but most of them are not. It is very
10 obvious you will never have occasion again to refer
11 to most of these things. They are not giving us any
12 help; they are wasting our time.

13 MR. ONO: Since some of the defendants were
14 Ministers of War or of the Navy or were chiefs of
15 bureaus in those ministries -- vice-ministers or chiefs
16 of bureaus in those ministries -- I wished to make clear
17 the basis of the laws concerning these organizations
18 with a view of clarifying their individual responsi-
19 bility.

20 THE PRESIDENT: We fully appreciate that.
21 We should know exactly under what ordinances or statutes
22 the different ministers or vice-ministers have operated,
23 but it isn't necessary to go into so much detail.

24 MR. ONO: With this I shall conclude my read-
25 ing of this document.

1 We now read exhibit No. 76 presented by the
2 prosecution which is the Imperial Ordinance relating
3 to the organization of the Ministry of Foreign Affairs:

4 "Article 1. The Minister of Foreign Affairs
5 shall control affairs relating to the conduct of
6 political affairs concerning foreign countries, to
7 the protection of Japanese commercial affairs in foreign
8 countries and to Japanese subjects residing in foreign
9 countries, and direct and supervise Japanese Diplomatic
10 and Consular Officers.

11 "The Minister of Foreign Affairs shall direct
12 and supervise the Japanese Ambassador Extraordinary
13 and Plenipotentiary to Manchoukuo in regard to those
14 affairs of the Kwantung Bureau which pertain to ex-
15 ternal matters.

16 "Article 4. There shall be instituted in the
17 Ministry of Foreign Affairs the following six Bureaus:

18 "East Asiatic Bureau, European and Asiatic
19 Bureau, American Bureau, South Seas Bureau, Commercial
20 Bureau, Bureau of Treaties and Conventions.

21 "Article 5. The East Asiatic Bureau shall
22 take charge of diplomatic affairs concerning Manchoukuo,
23 China, Hongkong and Amoy.

24 "Article 6 (Third) The South Seas Bureau
25 shall take charge of diplomatic affairs concerning

1 Thailand, the Philippine Islands, Indo-China, Burma,
2 Malaya, North Borneo, the East Indies, Australia,
3 New Zealand, the other Oceanic islands, and the Antarctic
4 region.

5 "Article 7. The Commercial Bureau shall take
6 charge of affairs concerning commerce and navigation.

7 "Article 8. The Bureau of Treaties and
8 Conventions shall take charge of affairs relating to
9 treaties and conventions and to matters concerning
10 external laws and regulations."

11 THE INTERPRETER: The English translations
12 of part 1 and part 2 of Article 6 were missing and I
13 shall read them now:

14 "Article 6. The European and American Affairs
15 Bureau shall take charge of such diplomatic affairs
16 as are not handled by the Asiatic Bureau, the American
17 Bureau and the South Seas Bureau.

18 "No. 2, Article 6. The American Bureau shall
19 handle matters concerning immigration and the granting
20 of visas as well as diplomatic affairs relating to the
21 countries of America, including Canada, and its
22 dependencies excluding the Philippine Islands."

23 MR.ONO: We now read exhibit No. 77 presented by
24 the prosecution which is the Military Ordinance No. 1
25 concerning Military Ordinance. This will show that

1 the Military Ordinance concerning the command of Army
2 and Navy is of different nature from other Imperial
3 Ordinances.

4 "Article 1. The regulation concerning the
5 command of Army, Navy which has gone through Imperial
6 approval is said Military Ordinance.

7 "Article 2. The Ordinance which necessitate
8 to put to publicity, is signed by the Emperor with
9 His Instruction and Army or Navy Minister concerned
10 countersigns and writes down the date.

11 "Article 3. The Ordinance is issued on the
12 Official Gazette.."

13 THE PRESIDENT: That seems to be a very
14 poor translation from the Japanese into English. I
15 am referring to exhibit 77.

16 MR. ONO: This exhibit is an exhibit presented
17 by the prosecution and I have read from the exhibit as
18 presented by the prosecution with translation attached.
19 I hope that any translation matters will be referred
20 to the Language Board.

21 THE PRESIDENT: We appreciate what you say.
22 The Language Section might attempt a better translation.

23 We will adjourn now until half past nine
24 tomorrow morning.

25 (Whereupon, at 1600, an adjournment

17,506

1 was taken until Friday, 28 February 1947,
2 at 0930.)
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